No. 10807

United States

Circuit Court of Appeals

For the Ninth Circuit.

ASSOCIATED INDEMNITY CORPORATION, a corporation, HILLCONE STEAMSHIP COMPANY, a corporation and SANTA CRUZ OIL COMPANY, a corporation,

Appellants,

vs.

WARREN S. PILLSBURY, Deputy Commissioner of the United States Employees' Compensation Commission, for the Thirteenth District and ALBERT V. STEFFENS,

Appellees.

Apostles on Appeal

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Rotary Colorprint, 590 Folsom St., San Francisco

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States Employees' Compensation Commission

Before Warren H. Pillsbury, Deputy Commissioner
13th Compensation District

Case No. 2739-1
Claim No. 1545

ALBERT V. STEFFEN,

Claimant,

vs.

HILLCONE STEAMSHIP COMPANY,

Employer,

ASSOCIATED INDEMNITY COMPANY,

Insurance Carrier.

TRANSCRIPT OF TESTIMONY AT HEARING
Sept. 10, 1943

Pursuant to notice, this matter was heard before Warren H. Pillsbury, Deputy Commissioner, United States Employees' Compensation Commission, at the offices of the Commission, at four seventeen Market Street, San Francisco, California, on Friday, the 10th day of September, 1943, at the hour of 11:00 A.M.

Appearances:

Claimant, present in person.

Defendants, represented by W. N. Mullen, Attorney-at-law.

Anita Smith, Reporter. [1*]

*Page numbering appearing at foot of page of original certified Reporter's Transcript.

Mr. Pillsbury: Further hearing on my initiative under the following circumstances:

I entered a Compensation Order on August 22nd, 1941 rejecting Mr. Steffen's claim, on the ground that his service at the time of the injury was non-maritime. The case was taken by review in the manner provided by the Statute, to the United States District Court of Southern California, which reversed my decision.

The insurance company in the case, Associated Indemnity Company, took an appeal to the Circuit Court of Appeals in which the Commission and myself did not joint. The latter court has affirmed the District Court.

Upon receipt of the affirmance I have set the matter for further hearing to ascertain if the parties have anything further to offer before the matter is resubmitted for decision.

The nature of the jurisdictional question was that claimant was employed as a watchman on a vessel which had been out of commission and laid up for some years. Earlier decisions of the lower Federal Courts which the Commission was following at the time, took the view that such service was non-maritime in character. The rule as now established in this circuit is that such service is maritime in character. [2]

ALBERT V. STEFFEN,

the claimant, recalled, previously duly sworn, testified as follows:

Mr. Pillsbury: Q. Mr. Steffen, have you returned to work since the last hearing?

A. Yes, I have.

Q. When did you return to work?

A. First was in '41—no. Wait a minute. I got out in '41. I was discharged from the hospital the 22nd day of December, 1941.

Q. And did you go back to work at that time?

A. No.

Q. When did you return to work?

A. Well, I would have to get those dates. I am sorry.

Q. It was some time in 1942? A. Yes.

Q. Do you remember what month?

A. No, I don't.

Q. Since your return to work, have you been making wages as good as those you were receiving at the time you were hurt?

A. I didn't in '42, but have in '43.

Q. Are you completely recovered from your injury at this time?

A. That would be up to the doctor.

Q. You don't know? [3]

A. No, I don't know.

Q. Do you feel any physical impairment now?

A. Oh, yes, I feel much better.

Q. You feel you can do full work now?

A. No.

Mr. Pillsbury: Mr. Mullen?

(Testimony of Albert V. Steffen.)

Mr. Mullen: Q. As far as your back is concerned, how is that?

A. I am still sleeping on the boards.

Q. Could you go back and do your watchman job as far as your back is concerned? A. Yes.

Q. I notice you have a brace on your leg. That is the thing that would hold you back at the present time, is that right? A. That's right.

Q. Have you had any further injuries or periods of disability since the latter part of '41?

A. Yes.

Mr. Pillsbury: Q. Have you had any new accidents? A. Oh, yes.

Q. New accidents? A. Yes.

Mr. Mullen: Q. When did they occur and where? Just give it generally. [4]

A. Is this a hearing? Have I a right to have counsel here?

Mr. Pillsbury: If you want to ask for postponement to have an attorney, you may do so.

The Claimant: Yes, because I might be out of line.

Mr. Pillsbury: Mr. Mullen, you want a continuance anyway. Don't take this.

(Discussion off the record.)

What is your situation, Mr. Mullen?

Mr. Mullen: I would like to have the matter continued, too.

Mr. Pillsbury: I understood you had not been able to get the record.

(Testimony of Albert V. Steffen.)

Mr. Mullen: No. It is en route from Los Angeles.

Mr. Pillsbury: The case will be continued to Tuesday, September 28th, at 10 A. M.

I hereby certify that the foregoing is a correct transcript of the testimony and proceedings taken in the above matter at the hearing held on September 10, 1943.

ANITA SMITH
Reporter

[Endorsed]: Filed Sept. 18, 1943. [5]

[Title of Commission and Cause.]

TRANSCRIPT OF TESTIMONY AT HEARING
Sept. 27, 1943, 10:00 A. M.

Pursuant to notice, this matter was further heard before Warren H. Pillsbury, Deputy Commissioner, United States Employees' Compensation Commission, at the offices of the Commission, at four seventeen Market Street, San Francisco, California, on Monday, September 27, 1943, at the hour of 10:00 A. M.

Appearances:

Claimant, present in person and represented by A. A. Goldstone, attorney-at-law.

Defendants, represented by W. N. Mullen, attorney-at-law.

Anita Smith, Reporter. [1]

Mr. Pillsbury: This is a continued hearing.

Mr. Goldstone reviews the transcript of the previous hearing. Don't take this.

(Off the record.)

Mr. Pillsbury: Formal discussion has just been had with reference to some questions by Mr. Mullen as to whether he may present further evidence going to the contention that claimant was not injured as claimed, to which Mr. Goldstone replies by drawing attention to the Decree of the United States District Court in this case, being the Decree of Judge H. A. Holzer, of November 9, 1942, the portion quoted being as follows:

> "The parties hereto through their respective counsel, having stipulated that the liability of Respondents be determined on the issue of whether or not the service or employment of Libellant at the time he admittedly was injured was maritime in character."

It being Mr. Goldstone's position that this portion of the Decree establishes a stipulation by the defendants, Hillcone Steamship Company and Santa Cruz Oil Company and their insurance carrier, Associated Indemnity Corporation, that if it be determined that the case was within the provisions of the Longshoremen's and Harbor Workers' Compensation Act jurisdictionally, that defendants stipulated that the fact of injury in the course of employment should be taken as an established fact or further defense thereon waived. [2]

Mr. Mullen contends that no such *stipulated* was entered into before the Court and that in any event, as I had made no finding on the fact of injury in my Compensation Order, that the Court would not have power to bind me, this not being an issue before the Court.

He also alludes to the closing paragraph of the Decision of the Circuit Court of Appeals' opinion modifying Judge Holzer's Decree to remand the matter to me for decision upon all points in issue except the matter of jurisdiction, which was established by the Circuit Court of Appeals.

My answer to these contentions is as follows:

First, in my Compensation Order I decided the case solely upon my belief that I was without jurisdiction by reason of the non-maritime character of claimant's services, as the court decisions and constructions of the Employees' Compensation Commission then stood, and I did not enter any decision upon the other issues in the case at that time.

Second, in view of this status of the proceeding, and particularly the language of the last paragraph of the Opinion of the Circuit Court of Appeals, it is now necessary for me to enter decision upon all issues raised in the proceeding before me, and that the decision of the Federal Courts does not bind me except upon the question of jurisdiction.

Third, that if the present defendants here did enter into stipulations before the Federal Courts admitting the occur- [3] rence of injury and so forth, such stipulations are relevant and may be

offered in evidence now as admissions against interest by defendants at least, or possibly with further legal effect as judicial stipulations to narrow the issues in the case at the present time.

Fourth, I am uncertain as to whether a fair construction of the language used by Judge Holzer in his opinion wholly establishes the contention of Mr. Goldstone as to the fact and scope of such stipulations, in view of Mr. Mullen's denial that such stipulations were entered into.

I would like to have Mr. Goldstone file further evidence concerning the fact and extent of such stipulations in the District Court by defendants, if such is obtainable, to throw further light upon the proper construction to be given the language of Judge Holzer.

Fifth, since this matter was tried before me fully and its merits not submitted for decision, I am not willing to allow defendants to reopen the submission of the case to offer further evidence with reference to whether claimant's injury occurred in fact or not, at least as to evidence which was or should with ordinary diligence have been produced before me prior to the submission of the matter for decision.

In other words, I do not wish to re-try issues of fact which have already been fully tried before me. If, however, there is some later discovered evidence which could not with [4] ordinary diligence have been produced at the earlier hearings, that is an-

other matter and I will consider a ruling on this if such evidence is offered and objected to.

The question as to the extent of claimant's further disability and whether due to injury since the last hearing in the case prior to my decision is wholly open for the presentation of further evidence.

Stipulated that I may write the United States Marine Hospital at San Francisco to request summary of claimant's medical and hospital history since the last information received from the Marine Hospital; also that a subpoena which Mr. Mullen had served upon the Marine Hospital to produce its files here today may be considered as dropped. That is correct, is it, you will drop the subpoena now?

Mr. Mullen: Oh, yes.

Mr. Pillsbury: Now, what does either side have further to offer? I am not quite sure who is the moving party on the present stage of the case.

Mr. Mullen: Well, it is just right back, I guess.

Mr. Pillsbury: You have asked, Mr. Mullen, opportunity to put in further testimony?

Mr. Mullen: Yes.

Mr. Pillsbury: So proceed. Before proceeding, Mr. Goldstone or Mr. Mullen, do you desire to amplify the summary I have just dictated of the discussion? [5]

Mr. Goldstone: I would like to change one word, that is the word "no" in place of "further", and

that further evidence be waived in respect to my statement as to the meaning of the stipulation.

Mr. Pillsbury: I think you had better state that more fully.

Mr. Goldstone: Will you read there the beginning of Mr. Pillsbury's statement?

(Thereupon the record was read by the reporter.)

Mr. Pillsbury: Mr. Goldstone, I suggest for clearness you restate your understanding of the stipulation referred to by Judge Holzer.

Mr. Goldstone: Yes. It is my understanding of the stipulation entered into between counsel for the respective parties in the United States District Court, that the liability of defendants be determined upon the single disputed issue of whether or not the service or employment of Libellant, Albert V. Steffen, as a watchman on the S.S. "Prentiss" at the time that he was admittedly injured was maritime in character. If his employment was maritime in character the Libellant was entitled to and should have compensation, under the Act. If his employment was not maritime in character at the time of his injury, he was not entitled to such compensation.

Mr. Pillsbury: That is, you understood that counsel for the insurance carrier in the case abandoned all defenses before [6] me other than the question of jurisdiction?

Mr. Goldstone: That is my complete understanding, openly admitted in court the man was injured

in his employment, and we rested the case on this.

Mr. Mullen: Assuming that the situation was—which I do not admit—as just stated by Mr. Goldstone in respect to the stipulation, I beg leave of this Commission that if there was such a stipulation entered into, it be withdrawn for the reason that the defendants, particularly Associated Indemnity Corporation, had not been given full information concerning this man's past as to when he had had trouble with his back, he having testified that he had never had any trouble with his back prior to this alleged injury of February, 1937.

Mr. Pillsbury: I would not presume to interject myself into the proceeding of the United States District Court to the extent of purporting to give permission to withdraw any stipulation entered into in the Court. However, if you are suggesting a request to broaden the issues before me at this time because of some fraud or concealment on the part of the claimant, I will rule on such request when made.

Mr. Mullen: Might we stipulate, Mr. Pillsbury, that as part of the record insofar as this question with respect to the stipulation and with respect to anything else that be offered, it will be held by you that will include copies of all proceedings in the United States District Court? [7]

Mr. Goldstone: I will say this in respect to that m here——

Mr. Pillsbury: Indicating what?

Mr. Goldstone: The Apostles on Appeal. I will——

Mr. Pillsbury: I can shorten that. The Apostles on Appeal and all proceedings in the Federal Courts in review of this decision, I am satisfied are all part of the present record, or that I may take judicial notice of them, but I would like to have the parties give me the necessary documents for the file.

Mr. Goldstone: By the necessary documents, you mean——

Mr. Pillsbury: Whatever there is that is relevant. Mr. Goldstone gives me a copy of the printed Apostles on Appeal in this proceeding.

Mr. Mullen: Then we will each send in our own pleadings which were printed up.

Mr. Goldstone: All the proceedings are in there.

Mr. Pillsbury: Don't take this.

(Discussion off the record.)

Mr. Pillsbury: Either side may file with me any portions of briefs in the District Court or Circuit Court of Appeals which may assist in construing the language of the District Court Decree with reference to whether or not certain suggested stipulations were entered into, and their extent. I have also previously suggested that if there is a substantial [8] issue on this question, a letter from the United States Assistant Attorney handling the case, or an affidavit from Mr. Goldstone, or both, as to the nature and extent of the stipulations entered into orally before the Court may be filed.

Mr. Goldstone: In connection——

Mr. Pillsbury: Don't take this.

(Discussion off the record.)

ALBERT V. STEFFEN,

having been previously duly sworn, testified as follows:

Mr. Mullen: Q. Mr. Steffen, have either the Hillcone Steamship Company or the Santa Cruz Oil Company, or Associated Indemnity Corporation paid you any compensation for your alleged injury of about February, 1937?

A. No, sir.

Q. Have either one of them or both of them, or any of them, any one of them, agreed to pay you any compensation? A. Yes, sir.

Q. Who? A. Mr. Cortes, the agent.

Mr. Pillsbury: I think, Mr. Mullen, that was fully covered at the time Mr. Steffen and Mr. Cortes testified here. There was a wide difference of opinion between them at that time. [9]

Mr. Mullen: I didn't know there was any testimony on compensation. I knew there was on the medical.

Mr. Pillsbury: Well, if there is any uncertainty on that point, proceed.

Mr. Mullen: Q. You say a Mr. Cortes agreed to—— A. To take care of me.

Q. To take care of you? A. Yes, sir.

Q. By the payment of compensation or the furnishing of medical treatment, or what?

A. Both. That I would be taken care of medically, also with compensation. Not to worry about any compensation at all.

Q. Now, when did he tell you that?

(Testimony of Albert V. Steffen.)

A. Mr. Cortes made several trips up to the hospital while I was in the hospital and there he gave me several times, you know, a ten dollar bill or something like that, for cigarettes.

Q. Well, that was a gift.

A. Well, yes, sir.

Q. When was the last time he told you you would be taken care of?

A. In 1939—pardon me—that was 1940.

Mr. Goldstone: Q. That is, to the best of your recollection?

A. Yes, to the best of my recollection. [10]

Mr. Mullen: Q. About what time in 1940?

A. Just before the filing—that was just before Christmas of 1940. Mr. Mullen, there is doubt there as to whether it was '39 or '40.

Q. Well, you hadn't seen him for some time before you filed before this Commission, had you?

A. The last time I saw Mr. Cortes, he drove up there with his wife. He had just been married.

Mr. Pillsbury: Q. To the Marine Hospital in San Francisco?

A. The Marine Hospital in San Francisco, yes.

Mr. Mullen: Q. Shortly after his marriage?

A. Yes. That's the only way I could determine the date he was up there.

Q. Now, Dr. Oliver rendered a report which is a part of the record in this case, which shows you had been treating with him for some years prior to

(Testimony of Albert V. Steffen.)

1936 or '37, for a back and arthritic condition. Is that correct? A. I don't know, Dr. Oliver.

Mr. Goldstone: Just a moment now. I suggest again you are re-covering again the complete record there. I think that was all gone into in the record. Do we have to go over that again?

Mr. Pillsbury: Not if it was covered.

Mr. Mullen: I think the report was filed after the testimony.

Mr. Pillsbury: Don't take this. [11]

(Off the record.)

Mr. Mullen: Well, I will withdraw that question and ask you if you recall seeing Dr. Carroll of Long Beach, Doctor of Osteopathy?

A. That was in the third hearing, your Honor. There was a notice from the company and you said I didn't have to testify regarding Dr. Carroll because he based his opinion on records—I mean he had no records of my calling on him. He just surmised. Do you recall that? That was in the third hearing.

Mr. Pillsbury: I recall making an investigation after notification of the parties, during which I called on one or two doctors. It seems to me one was a chiropractor and I put a summary of my questions to them and the answers in the record.

The Claimant: That's right.

Mr. Goldstone: With respect to Dr. Carroll, he was making an affidavit on matters which occurred ten years before, as he said.

(Testimony of Albert V. Steffen.)

Mr. Pillsbury: There is an exhibit in the record, Exhibit "A", which is a report of C. C. Carroll, D.O., in which Dr. Carroll states that he had treated Mr. Steffen possibly twenty times, the first time dating back to 1931, and made a diagnosis of arthritis with reference to the feet, and complained of back pains throughout. Now, what is the question?

Mr. Mullen: My question is whether or not you were ever [12] treated for any back trouble prior to this alleged injury of February, 1937, by Dr. Carroll?

A. The answer is that I called on Dr. Carroll—

Mr. Goldstone: Just a moment. With respect to that, we have a further statement in the record, Mr. Pillsbury, that you rejected that evidence, if it is true that you did reject that evidence.

Mr. Pillsbury: What page?

Mr. Goldstone: My understanding is that the evidence was of such a character that you could not accept it, or you could not rely upon it. You did not accept it.

Mr. Pillsbury: I don't recall that.

Mr. Goldstone: I would like to have Mr. Steffen make a statement then at this time as to what his recollection is concerning that testimony.

Mr. Pillsbury: I think Mr. Mullen's question is relevant, nevertheless.

Q. Did you go to this Dr. Carroll for treatment for arthritis of your feet, knees and for back pains

(Testimony of Albert V. Steffen.)

a considerable number of times, commencing about 1931? A. No, sir.

Q. Did he ever treat you prior to your injury while in the employ of Hillcone Steamship Company, for anything relating to your back?

A. No, sir. [13]

Mr. Pillsbury: Proceed, Mr. Mullen.

Mr. Mullen: Q. Were you ever treated by any one for any disability of your back prior to this alleged injury of 1937? A. Yes, sir.

Q. When and where? A. In Long Beach.

Q. And about when?

A. I couldn't say that. Mr. Pillsbury has the bills for those receipts that I paid. One, if you remember, Mr. Pillsbury, was Godfrey, a medical man, and the other one was—I tried to take some treatments from a chiropractor—Sutliff or Suttle. You called on him, did you not?

Mr. Pillsbury: I don't recall. When my file comes back it will contain the memoranda of my investigation.

The Claimant: Suttle, I think it was, well, he tried for a while but couldn't treat me.

Mr. Mullen: Q. When did you go to him?

A. After the accident.

Q. You never went before? A. No.

Q. Well, my question was whether you had ever had your back treated, or had any complaint of your back prior to this alleged injury of February, 1937. A. Not that I remember.

(Testimony of Albert V. Steffen.)

Q. How is your memory? Pretty good? [14]

A. Oh, I have got a wonderful memory.

Q. Had you ever received any treatment prior to February, 1937 for rheumatism or arthritis of your feet or your knees or spine or shoulders or neck?

A. In 1932 I think—I am guessing—in Seaside Hospital, Dr. Bishop and Dr. McCoy.

Q. And they treated you for what?

A. A foot operation.

Q. Did you ever go to a Dr. Earl prior to this injury?

A. Mr. Cortes sent me over to Dr. Earl in San Diego for a nose treatment when I was burning paint off the ship, and there he got Dr. Earl to treat me on a certificate of Captain Marshall of the "Degoda." He didn't treat me for my back at all. He is an ear and nose specialist.

Q. Do I understand your testimony then, that you had never had any trouble with your back, nor any treatment for your back, prior to this incident of February, 1937?

Mr. Goldstone: May I call attention to the testimony on page 81 of the Apostles on Appeal, that the same grounds have been covered in which Mr. Pillsbury stated to Mr. Steffen, "We are only concerned with your back now primarily. A. I never had any trouble with my back before."

Mr. Mullen: Q. And you still give the same answer? A. Yes, sir.

(Testimony of Albert V. Steffen.)

Q. All right. When did you leave work after this inci- [15] dent of 1937?

A. August—I can't remember the exact day, but I know Mr. Cortes took me over to the Public Health place in San Pedro. I think it was the fore part of August.

Q. Of what year? A. '38.

Q. In other words, you worked continuously at your job from February, 1937, up to some time in August, 1938?

A. I was admitted to the U. S. Marine Hospital the 5th day of August, so it must have been the 1st or 2nd he took me up.

Q. But you did work at your regular job there from February, 1937, up until approximately the 1st of August, 1938? A. That's right.

Q. Now, when again did you next go back to work after approximately August 1, 1938?

A. I went back to work August 10, 1942.

Q. Did you do any work before that?

A. I did a little singing.

Q. Well, that's work. When did you start singing? A. I think in February of 1942.

Q. Now, what is your present condition insofar as your complaints are referable to your alleged injury of February, 1937?

Mr. Pillsbury: Wait. Let me get it clear first. Do you [16] claim that you are still disabled from labor by reason of the injury for which you are claiming compensation? A. I do not.

(Testimony of Albert V. Steffen.)

Q. When did you recover from this injury to a sufficient extent to enable you to return to work?

A. I would say in August.

Q. Of this year?

A. When I went to work over in the shipyard.

Q. This year or a year ago? A. 1942.

Q. Thirteen months ago? A. That's right.

Q. And what date in August?

A. The 10th.

Q. And you are satisfied that no compensation should be awarded you after August 10, 1942?

A. That's right.

Mr. Mullen: Q. Well, when you left the Marine Hospital, what was the condition of your back?

A. Well, I had severe pain in there at night when I would lay down and I couldn't do any lifting or any walking around to a great extent, but if I sat around during the day in my room, I could go out—they would arrange for me to go out to the various camps and when I sing a couple of numbers and act as M.C., that was all I could do. There was no chance to [17] return back to work.

Q. Did the doctors tell you anything about your ability to return to work when you left the Marine Hospital?

Mr. Goldstone: Just a moment. I think there is a record on that, your Honor.

Mr. Pillsbury: I will get a record, in any event.

Mr. Goldstone: I think we better have the record—unless the statement was made to you.

(Testimony of Albert V. Steffen.)

A. Well, it was.

Q. Then you—then I don't object to the answer.

A. Dr. Christian said I could try it and outside work would do me good if I could find some light work, but definitely very light work, and if I would take care of myself it would be all right.

Mr. Mullen: Q. What pay did you get from the singing job?

A. I think I got $95.00 a month.

Q. And did you do any extra work?

A. Once in a while.

Q. About how much did you average in addition to the $95.00 with your singing job?

A. Oh, it would vary. Sometimes I would pick up five or ten dollars on the side.

Q. A week? A. No—a month. [18]

Q. Then you continued to do that, did you, until you went to work in the ship yard in August, 1942? A. That's correct.

Q. And by the time you went to work in the ship yard, your back was all right?

A. Well, I wouldn't say it was perfectly all right, but I got a light job over there, pipe fitter's helper, and didn't have any lifting or climbing to do, so I got by with it.

Q. You sustained some injury there, did you?

Mr. Goldstone: I will object to anything that occurred after August 5, 1942.

Mr. Pillsbury: Sustained.

(Testimony of Albert V. Steffen.)

Mr. Mullen: Q. Did you injure your back at any time between February, 1937 and the time that you went to work on the W. P. A.? A. No.

Q. Were you involved in an automobile accident on or about the 31st day of March, 1942?

A. That's right.

Q. And did you file a complaint for damages because of injuries you received in that accident?

A. I did.

Q. And did you read the complaint which was filed in that case? A. No. [19]

Q. You did discuss this case with your attorneys, however, did you not? A. Yes.

Q. Who were they?

A. Delaney and Michelsen.

Q. And did you tell them in connection with that discussion that you had suffered a severe strain of your back? A. No, sir.

Mr. Pillsbury: That would be on March 3, 1942?

Mr. Mullen: Right.

Mr. Pillsbury: The existence of additional disability starting on that day would not necessarily entitle you to be relieved from further liability if, in fact, disability from the 1937 injury would still have continued.

Mr. Mullen: But I have here a certified copy of the complaint which I have just referred to, which I would like to offer in evidence after counsel has a chance to see it.

Mr. Goldstone: I would like to call attention to

(Testimony of Albert V. Steffen.)

the fact that there was no allegation of injury to the back contained in this complaint.

Mr. Pillsbury: Are you objecting?

Mr. Goldstone: And I object to the introduction of the complaint, upon the ground it has no bearing on the issues in this case, irrelevant, incompetent and immaterial.

Mr. Pillsbury: Yes. I don't—— [20]

Mr. Mullen: Insofar as stating there is no statement here with respect to an injury to the back, I still wish to offer this in evidence as to a severe strain of his neck, strain of the shoulder and strain of the left wrist, severe nervous shock, and I have asked him whether or not he told his attorneys that he had something wrong with his back and he said he did not, but I still offer it as preliminary to questioning further—further questions I intend to ask.

Mr. Pillsbury: I do not see any relevancy to the document at this time, as it does not allege any new back injury. However, I am unable to estimate the extent to which it might be needed as a matter preliminary to such further questions. I think you should develop the matter by questions, Mr. Mullen. I will withhold my ruling.

Mr. Mullen: All right.

Q. Now, in connection with this March, 1942 affair, were you examined by Dr. Sooey?

A. Yes, I was—the insurance company sent me over there.

(Testimony of Albert V. Steffen.)

Q. And did you discuss with Dr. Sooey this alleged injury of February, 1937, to your back?

A. I think Dr. Sobey asked me regarding that accident when he was discussing the throat operation.

Q. Well, when he saw you, did he know about this affair of 1937, or did you tell him about it?

A. I don't remember that. [21]

Q. Did you discuss with him how long you were disabled as the result of any injury you might have sustained in 1937 to your back?

A. Oh, I think that came out through the hospital, yes.

Q. Did you tell Dr. Sooey how long you were disabled as a result of this fall with which we are here concerned? A. I don't remember.

Q. As a matter of fact, did you tell him you were only laid up a month as a result of your fall?

A. No.

Q. You did not tell him that? A. No.

Q. Now, you had some injury, you say, over there at the ship yard. Is that right?

Mr. Goldstone: I have objected to any evidence concerning anything that occurred after August 5, 1942, which was sustained.

Mr. Pillsbury: What are you trying to establish, Mr. Mullen?

Mr. Mullen: Veracity of the witness.

Mr. Pillsbury: Objection sustained.

Mr. Mullen: Q. Now, in connection with this

(Testimony of Albert V. Steffen.)

complaint we have just referred to, there was a deposition taken from you, was there not, when you appeared before a Notary Public and a reporter? [22]

A. That's right.

Q. And you were asked questions?

A. Yes.

Q. And after that deposition was written up, did you read it and did you sign it?

A. No, I never saw it.

Q. I will ask you at that deposition if you gave any testimony with respect to your back injury of 1937, or any prior time?

Mr. Goldstone: I object to that on the ground the deposition would be the best evidence.

Mr. Pillsbury: Objection overruled.

Mr. Goldstone: If you recall.

A. I don't remember about giving any such testimony.

Mr. Mullen: I ask you whether or not at that time you testified you had injured your back in the early part of 1940?

A. I don't remember whether I did or not.

Q. I will ask you whether or not at said time and place you testified that as a result of your disability, you went to the Marine Hospital in San Francisco?

Mr. Goldstone: When was this supposed to be given?

(Testimony of Albert V. Steffen.)

Mr. Mullen: The deposition was given shortly after March—March 20, 1943.

Mr. Goldstone: I submit the records at the Marine Hospital would cover all that. No matter what was said in that [23] deposition, it is immaterial what may or may not have been said.

Mr. Pillsbury: I cannot tell at this time whether the attorney may be seeking to produce in evidence admissions against interest on the part of the claimant. Proceed.

Mr. Mullen: What was the question, please?

(Thereupon the question was read by the reporter.)

Mr. Pillsbury: Did you so testify?

A. I don't remember.

Mr. Mullen: Q. Did you testify at said time and place that in December, 1941 you were discharged from that hospital? A. I don't remember.

Q. Did you then and there testify that the last you were in the Marine Hospital you were able to walk around and get about all right?

Mr. Pillsbury: Mr. Mullen, have you anything there that would be contradictory to his testimony here?

Mr. Mullen: Yes.

Mr. Pillsbury: Then I wish you would get directly to it.

Mr. Goldstone: I move to strike all this.

Mr. Pillsbury: Don't take this.

(Off the record.)

(Testimony of Albert V. Steffen.)

Mr. Pillsbury: Go ahead.

Mr. Mullen: Q. At that time did you testify that you had never had any pain in your neck prior to this alleged automobile accident of 1942? [24]

A. I don't remember.

Q. You have no recollection as to what you testified to at that deposition at all, is that right?

A. Yes, that's right.

Mr. Pillsbury: The objection to the tender in evidence of the complaint for damages in said proceeding is sustained.

Mr. Mullen: Well, I have ordered a certified copy of the transcript given at that deposition. Unfortunately the time was so short I couldn't get it.

Mr. Pillsbury: I have not heard anything in the questions and answers you read which appear to me to be inconsistent with the testimony he has given.

Mr. Mullen: That is why I want to put it in the record.

Mr. Pillsbury: Well, you are attempting to impeach the witness by contradictory statements, as I understand it, and I have heard no contradictory statements. It would not be admissible for any other purpose.

Mr. Mullen: Except he testified he hurt his back in 1940, if the deposition be correct. He said he did not sustain an injury then and in the deposition he said——

Mr. Pillsbury: Don't take this.

(Off the record.)

(Testimony of Albert V. Steffen.)

Mr. Pillsbury: Go ahead, Mr. Mullen.

Mr. Mullen: Q. Did you ever have any pain in your neck prior to the accident of 1942, the automobile accident? [25]

A. Do you want to go back to 1937?

Mr. Pillsbury: Any time before 1942.

A. Before 1942?

Mr. Mullen: Before this automobile accident.

A. That's while I was in the Marine Hospital, the doctor removed some kind of a growth from my shoulder there.

Mr. Pillsbury: Indicating left shoulder.

Mr. Mullen: Q. Had you ever had any pain in your neck or the upper part of your back prior to this automobile accident in 1942?

Mr. Goldstone: To the best of your recollection, yes or no.

A. Well, back in 1915 I would say I had an operation on my neck. Is that what you want?

Mr. Mullen: I don't know.

Mr. Pillsbury: Q. Did you have any pain in your neck before 1942?

A. Well, I would say yes.

Mr. Goldstone: May I object to the question as being too vague, indefinite and uncertain. You are speaking from the time of the man's birth.

Mr. Mullen: That he recalls, yes.

Mr. Pillsbury: Proceed, Mr. Mullen.

Mr. Mullen: Q. I ask you if you testified at the deposition I just mentioned that prior to this 1942

(Testimony of Albert V. Steffen.)

accident you [26] had never had any trouble with your neck?

Mr. Pillsbury: I am looking through the record to see if Mr. Steffen testified to a neck trouble at the hearings before me.

Mr. Goldstone: I don't recall any such matter.

Mr. Pillsbury: If he did not, then the question is irrelevant.

Mr. Goldstone: And it is objected to on that ground. I don't think there has any testimony been offered at any time by Mr. Steffen that he claimed any compensation for his neck, or that he sustained a neck injury at that time.

Mr. Pillsbury: Objection sustained.

Mr. Mullen: Q. Now, isn't it true that some years ago you had a tumor on your neck, or an abscess after a tonsilectomy?

Mr. Pillsbury: Just a minute. I don't find in his previous testimony any complaint of pain in the neck resulting from the 1937 accident.

Mr. Mullen: No. It merely goes to the dependency to be placed on this man's testimony. He testified——

Mr. Pillsbury: I don't want to take time to hear examination on irrelevant grounds merely to hear contradictions to affect credibility. Don't take this.

(Off the record.)

Mr. Mullen: Q. When you saw Dr. Sooey, did you tell him [27] you had any pain in your back as a result of your automobile accident?

(Testimony of Albert V. Steffen.)

A. I don't remember that.

Q. Did you tell Dr. Sooey that you fell off a boat in 1935 and hurt your back? A. No.

Mr. Mullen: I think that is all, Mr. Commissioner. I would like to have this matter set down in Los Angeles, as I stated, and at that time we will offer, subject to admission, certified copy of the man's deposition which I have referred to, and a certified copy of his testimony before the Industrial Accident Commission in connection with the ship yard injury.

Mr. Goldstone: We will object to—of course, it has already been ruled upon concerning any injury since August 5.

Mr. Pillsbury: What evidence have you to offer in Los Angeles?

Mr. Mullen: That this man was complaining of his back and had trouble with his back before he went to work on this ship, and that he complained of his back while working there and prior to this alleged affair, and that he took treatments for the back.

Mr. Pillsbury: Q. Did you have any trouble with your back before this 1937 accident?

A. No, your Honor.

Mr. Pillsbury: Don't take this. [28]

(Discussion off the record.)

Mr. Pillsbury: Mr. Mullen, will you have any evidence to offer at Los Angeles relating to Mr. Steffen's condition after the hearings in 1941?

(Testimony of Albert V. Steffen.)

Mr. Mullen: No.

Mr. Pillsbury: Then I will sustain the objection to further hearing in Los Angeles, on the ground that from your offer of proof it seems that you are not offering anything except such matters as were gone into in the 1941 hearings, or were available at the time of those hearings and could have been developed further.

Mr. Mullen: They could not have been developed, some of them. I won't say that they all could not.

Mr. Pillsbury: That is the question. If there is something that you have learned of since and could not have gone into at that time reasonably, then I will grant the further hearing.

Mr. Goldstone: I think there should be a statement as to what——

Mr. Mullen: I wouldn't want to make a statement now, because all I had was telephone advice.

Mr. Pillsbury: Not for the record.

(Off the record.)

Mr. Pillsbury: Mr. Mullen, I will give you two weeks to outline to me by letter the additional information you would [29] like to offer at Los Angeles, indicating whether it related to matters which have developed since the 1942 hearings, or the discovery of any matters which could not with ordinary diligence have been followed up in the 1941 hearings. I may change my position in reference to your request if the case does go to a further medical examiner or impartial medical ex-

(Testimony of Albert V. Steffen.)

aminer and a fuller history would be advisable, but I must first decide whether there is a necessity for further medical evidence.

Mr. Mullen: Off the record.

(Discussion off the record.)

Mr. Pillsbury: Hearing open 2 weeks for such further request.

Mr. Mullen: At this time I wish to file with the Deputy Commissioner return of service of the subpoena for the Permanente Foundation Hospital in Oakland, who were to have brought their records here today, which they did not do.

(Discussion off the record.)

Mr. Pillsbury: Hearing continued to 1:30 P. M.

I hereby certify that the foregoing is a correct transcript of the testimony and proceedings taken in the above matter at the hearing held on September 27, 1943, at 10:00 A. M.

ANITA SMITH
Reporter

[Endorsed]: Filed 10-5-43. [30]

[Title of Commission and Cause.]

TRANSCRIPT OF TESTIMONY AT HEARING
Sept. 27, 1943
(1:30 P. M.)

Pursuant to adjournment, this matter was further heard before Warren H. Pillsbury, Deputy

Commissioner, United States Employees' Compensation Commission, at the offices of the Commission, at four seventeen Market Street, San Francisco, California, on Monday, September 27, 1943, at the hour of 1:30 P. M.

Appearances:

Claimant, present in person and represented by A. A. Goldstone, attorney-at-law.

Defendants, represented by W. N. Mullen, attorney-at-law.

Anita Smith, Reporter. [1]

Mr. Pillsbury: All right. We will proceed.

MRS. MARYBETH PETERSON,

called by defendants, being first duly sworn, testified as follows:

Mr. Pillsbury: Q. Your name please?

A. Marybeth Peterson.

Q. And your address?

A. 2618 College Avenue, Berkeley.

Mr. Pillsbury: She is here with the hospital file of the Permanente Hospital in Oakland—the Permanente Foundation Hospital, pursuant to subpoena of September 23, 1943. Further identification waived, Mr. Goldstone?

Mr. Goldstone: Yes.

Mr. Pillsbury: Mr. Mullen offers the following portions of the hospital record for introduction in

(Testimony of Mrs. Marybeth Peterson.)

evidence: In the admission record for September 26, 1942, "Admitted 10:50 P. M. Diagnosis, cerebral concussion. 2. Intracerebral hemorrhage." Attention is called by Mr. Mullen to the following portion of the history sheet on page 3.

Mr. Goldstone: This also goes to the testimony you excluded here. It relates to another injury, another matter.

Mr. Pillsbury: I assume what Mr. Mullen desires is what he stated at that time as to previous injuries. [2]

Mr. Goldstone: Tonsilectomy is an injury? Is that what you refer to in——

Mr. Pillsbury: Don't take this.

(Off the record.)

Mr. Pillsbury: The record purports to show that claimant gave a history of no serious previous injuries other than a tonsilectomy and an automobile accident.

Mr. Goldstone: I am going to object on the ground it is incompetent, irrelevant and immaterial, made under circumstances which would destroy any effect of any statement made concerning his previous history.

Mr. Pillsbury: As the matter is purely relevant, I will overrule the objection, but will state that I do not attach much significance to it, inasmuch as he had just entered the hospital with a diagnosis of cerebral concussion and intracerebral hemorrhage.

(Testimony of Mrs. Marybeth Peterson.)

Mr. Mullen: The next item is the report of Dr. O. W. Jones, of July 21, 1943.

Mr. Pillsbury: Mr. Mullen indicates a sentence on page 1 of the report of Dr. O. W. Jones, of July 21, 1943, as marked.

Mr. Mullen: Also the first paragraph of the report.

Mr. Pillsbury: These being apparently history purported to have been given by claimant to Dr. Jones, as appearing in the report of Dr. Jones. [3]

Mr. Goldstone: I don't see any objection to that.

Mr. Mullen: And the first paragraph.

Mr. Goldstone: I will object. It has no relevancy to the question here.

Mr. Pillsbury: The objection to the first paragraph here is sustained, as the paragraph relates only to the injury of September 16, 1942, while in the employ of the Permanente Foundation.

Mr. Mullen: But it does go direct to his statement that he was unconscious when he was in the hospital.

Mr. Pillsbury: I am not interested in the nature of that injury.

Mr. Mullen: It is only referred to because the hospital entrance sheet, page 2, shows no serious injuries, after the space provided for past history.

Mr. Pillsbury: This history only purporting to be given by claimant at a later date?

Mr. Mullen: That's right.

Mr. Pillsbury: The other item on page 1 of Dr.

(Testimony of Mrs. Marybeth Peterson.)

Jones' report reads as follows: "In 1937 he fell a distance of 8 feet from a ship, landing on his back which apparently was injured, because he says that thereafter he had so-called arthritis in his back and feet."

What is the next item?

Mr. Mullen: The next matter is Dr. Lawrence's report— [4] Dr. L. V. Lawrence, of March 2nd, 1943, particularly paragraph 2, which reads as follows——

Mr. Pillsbury: You have read this, have you?

Mr. Goldstone: No, I haven't.

Mr. Mullen: The first paragraph and the second paragraph of his report.

Mr. Pillsbury: Not for the record.

(Off the record.)

Mr. Pillsbury: The first entry relates only to the blow on the head in the Permanente accident, which I think is not material. The second marked portion is as follows: "The patient's past history is not complete. He volunteered very little information concerning his past health. He apparently, however, had an acute polyarthritis in 1930. I don't know whether that was a specific arthritis or not. Otherwise, I could not discover any points in his past history which you do not have on your hospital record."

This is in the report of Dr. Lester V. Lawrence, of March 2, 1943.

Anything else?

(Testimony of Mrs. Marybeth Peterson.)

Mr. Mullen: No.

Mr. Pillsbury: The file is returned to the bearer.

Stipulated I have just telephoned the United States Marine Hospital to request information as to the date of claimant's discharge from treatment, or from the hospital. The following [5] information was given me which, again by stipulation, is now read into the record:

"Discharged December 22, 1941 from hospital, fit for light duty. Prognosis guarded, but further improvement expected. Never saw him after that."

I am also informed by the Marine Hospital that claimant was hospitalized there for his automobile injury of 1942, and that the following is the last entry in the hospital records for said injury with respect to the date of discharge:

"Outpatient card April 1, 1942. Full duty; to call in 2 days for X-ray report. Record shows was discharged for full duty April 1, 1942."

Mr. Mullen: I would like to recall Mr. Steffen.

ALBERT V. STEFFEN,

the claimant, recalled, testified as follows:

Mr. Mullen: Q. You have never been paid any compensation since this injury of 1937?

Mr. Pillsbury: You asked that before.

Mr. Mullen: And the answer was "No"?

Mr. Pillsbury: The answer was "No."

(Testimony of Albert V. Steffen.)

Mr. Mullen: That's all—oh, just a moment. What did Mr. Cortes promise?

A. He promised I would be taken care of. [6]

Mr. Pillsbury: Anything else?

Mr. Mullen: That's all.

Mr. Pillsbury: The hearing will be closed except for permission given Mr. Mullen to file request for further hearing at Los Angeles within two weeks, itemizing the further evidence he proposes to offer, in order the relevancy may be decided on, in view of the objection made by Mr. Goldstone to further hearing.

I hereby certify that the foregoing is a correct transcript of the testimony and proceedings taken in the above matter at the hearing held on September 24, 1943, at 1:30 P. M.

ANITA SMITH

Reports

[Endorsed]: Filed 10-5-43. [7]

[Title of Commission and Cause.]

Claim No. 1545

AFFIDAVIT

State of California,

County of Los Angeles—ss.

Syril E. Tipton, being first duly sworn, deposes and says:

That he is a duly licensed practicing attorney-at-law in the State of California. That he represented

the defendants in the matter of the action of Steffen vs. Hillcone Steamship Company, et al., in that certain matter before the District Court of the United States for the Southern District of California, Central Division, being Case No. 1790 H in said Court. At the time said matter was called for hearing it was stipulated that the matter might be submitted upon the record of Warren H. Pillsbury, Deputy Commissioner, 13th District, United States Employees' Compensation Commission, and it was further stipulated that the matter to be determined by the District Court was whether or not the decision of the Commissioner that the matter was not maritime in character was or was not correct.

That your affiant did not in said cause enter into any stipulation waiving any defenses that the defendants might have in said matter in the District Court or before the United States Employees' Compensation Commission.

That the only matter submitted to the District Court was whether or not the Deputy Commissioner had jurisdiction.

SYRIL S. TIPTON

Subscribed and sworn to before me this 5th day of October, 1943.

DELLA ALLAIRE
Notary Public in and for said
County and State

United States Employees' Compensation Commission

13th Compensation District

COMPENSATION ORDER
AWARD OF COMPENSATION

Case No. 2739-1
Claim No. 1545

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

ALBERT V. STEFFEN,
Claimant,

against

HILLCONE STEAMSHIP COMPANY, and SANTA CRUZ OIL COMPANY,
Employer,

ASSOCIATED INDEMNITY CORPORATION,
Insurance Carrier.

Such investigation in respect to the above entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law, and compensation order having been entered on August 22, 1941 rejecting the claim for compensation in this proceeding upon the ground that claimant's service at the time of his injury was not maritime in character, and said order having been reviewed by the United States District Court and Circuit Court of Appeals, and said order annulled by said courts with direction to the Deputy Commissioner to take jurisdiction, and further hear-

ing having been held and the matter again submitted for decision, the Deputy Commissioner makes the following:

FINDINGS OF FACT

That during the month of February, 1938, the claimant above named was in the employ of the employer above named, Santa Cruz Oil Company, at Long Beach in the State of California in the 13th Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by the Associated Indemnity Corporation.

That claimant, Albert V. Steffen, was employed at said time as a ship watchman on board the S.S. "Prentiss". That during said month, the exact date not ascertainable, claimant sustained personal injury occurring in the course of and arising out of said employment and resulting in disability as follows: While descending a gangplank from said ship to the dock the gangplank fell, causing claimant to sustain a sharp contusion to his lower back. That said contusion aggravated and exacerbated a previous quiescent osteo-arthritis of the back, causing it to become painful and subsequently disabling.

That claimant orally notified Fred H. Cordes, District Manager of the employer, Hillcone Steamship Company, under whom claimant worked directly, on the day of his injury and on various occasions thereafter, that he had sustained said fall, and was in pain as a result thereof. That the employer did not

thereafter or at any time make report of said injury to the Commission or to the Deputy Commissioner of this Compensation District as required by Section 30(f) of the Longshoremen's and Harbor Workers' Compensation Act. That the claim for compensation herein has been filed within the time required by law;

That written notice of injury was not given within thirty days after the date of such injury, but that the employer had actual knowledge of the injury and that the employer has not been prejudiced by failure of claimant to give notice;

That the employer did not furnish claimant with medical treatment, etc., in accordance with Section 7(a) of the said Act, or at all. That the employer assisted claimant in getting admission to the United States Marine Hospital as a seaman for the treatment of his condition;

That the average annual earnings of the claimant herein at the time of his injury amounted to the sum of $1500.00;

That claimant continued in his employment with distress and under medical care until August 5, 1938, when he entered said United States Marine Hospital. His wages were paid to and including August 4, 1938. He was discharged from said Hospital on December 22, 1941, and was continuously disabled from labor until said date. During said time he was ill from heart trouble and active arthritis of the lower back, right knee, right foot and left foot. The arthritis of his lumbar spine was exacerbated by his injury and was an important

portion of his illness. The other conditions mentioned above were not the result of, or exacerbated by, said injury. Compensation due for said period, 176⅜ weeks at $19.22 a week, is $4410.71, no part of which has been paid;

That claimant's attorney, A. A. Goldstone, of Los Angeles, has rendered legal service to claimant in the prosecution of his claim since the return of the file from the United States Circuit Court of Appeals, for which a fee is approved in the sum of $150.00 and lien granted therefor upon compensation herein awarded. His disbursements, if any, are to be allowed for, when a statement thereof is submitted.

Upon the foregoing facts, the Deputy Commissioner makes the following:

AWARD

That the employer, Hillcone Steamship Company and Santa Cruz Oil Company, and the insurance carrier, Associated Indemnity Corporation, shall pay to the claimant compensation as follows: To claimant the sum of $4410.71, less however the sum of $150.00 to be deducted therefrom and paid to claimant's attorney, A. A. Goldstone, upon his lien for attorney's fee.

Given under my hand at San Francisco, California, this day of January, 1944.

WARREN H. PILLSBURY
Deputy Commissioner
13th Compensation District

WHP:eb.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Compensation Order, Award of Compensation, was sent by registered mail to the claimant, to the employer and to the insurance carrier at the last known address of each as follows:

Mr. Albert V. Steffen, 456 Harrison Street, San Francisco, California.

Hillcone Steamship Company and Santa Cruz Oil Company, 311 California Street, San Francisco, California.

Associated Indemnity Corporation, 332 Pine Street, San Francisco, Calif.

By regular mail to:

Mr. A. A. Goldstone, Attorney, 325 West 8th St., Los Angeles, California.

Mr. Wm. P. Lord, Attorney, 405 Guardian Bldg., Portland, Oregon.

Mr. W. N. Mullen, Attorney, 315 Montgomery Street, San Francisco, California.

U. S. Employees' Compensation Commission, 285 Madison Avenue, New York 17, N. Y.

.....

Deputy Commissioner

Mailed: ....., 1944.

WHP:EB:s

United States District Court
Southern District of California
Central Division

No. 3423-M—In Admiralty

HILLCONE STEAMSHIP COMPANY, a corporation, SANTA CRUZ OIL COMPANY, a corporation, and ASSOCIATED INDEMNITY CORPORATION, a corporation,

Complainants,

vs.

WARREN H. PILLSBURY, Deputy Commissioner of the United States Employees' Compensation Commission, for the Thirteenth District, and ALBERT V. STEFFEN,

Respondents.

CITATION AND ADMISSION OF SERVICE

The United States of America to the respondents Warren H. Pillsbury, Deputy Commissioner of the Thirteenth Compensation District, under the Longshoremen's and Harbor Workers' Compensation Act, and Albert V. Steffen, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals, Ninth Circuit, to be holden at the Post Office Building, in the City and County of San Francisco, State of California, within forty (40) days from the date hereof, pursuant to a petition for appeal filed in the Clerk's office of the District Court of the United States, for the Southern District of California, Central Division; wherein the Associated

Indemnity Corporation, a corporation, and the Hillcone Steamship Company, a corporation, and Santa Cruz Oil Company, a corporation, are the libellant-appellants, and Warren H. Pillsbury, Deputy Commissioner for the Thirteenth Compensation District, under the Longshoremen's and Harbor Workers' Compensation Act, and Albert V. Steffen, are the respondent-appellees, to show cause, if any there be, why the decree and order in said petition for appeal [2] mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the County of Los Angeles, in the District and Circuit aforesaid, this 15th day of May, 1944, and in the independence of America the One Hundred and Sixty-eighth year.

PAUL McCORMICK
United States District Judge for the
Southern District, Central Division

Receipt of copy of the within citation and admission of service is hereby acknowledged this 15 day of May, 1944.

RONALD WALKER
Asst. U. S. Atty.
Attorney for Respondent
Warren H. Pillsbury

[Endorsed]: Filed May 15, 1944. [3]

[Title of District Court and Cause.]

COMPLAINT FOR INJUNCTION

Complainants complain of respondents above named as follows:

I.

Complainant Hillcone Steamship Company is and at all times herein mentioned, has been a corporation having its principal place of business in the City and County of San Francisco.

That complainant Santa Cruz Oil Company is and at all times herein mentioned, has been a corporation existing under and by virtue of the laws of the State of California, having its principal place of business in the City and County of San Francisco.

That complainant Associated Indemnity Corporation was and now is an insurance corporation engaged in the writing of insur- [4] ance policies covering employees under the terms of the Longshoremen's and Harbor Workers' Compensation Act, and prior to the time hereinafter mentioned, said complainant had entered into a contract with the other complainants insuring all employees who sustained personal injuries arising out of and in the course of their employment and who were employed on the "S.S. Prentiss."

II.

That respondent Warren H. Pillsbury is and at all times herein mentioned, was a Deputy Commissioner of the United States Employees' Compensation Commission for the Thirteenth District, which includes the State of California, and as such is administering the provisions of the "Longshoremen's and Harbor Workers' Compensation Act" (Public, 803, 69th Congress; 33 U. S. Code 901-950)

with his principal office in the City and County of San Francisco, California.

III.

That during the month of February, 1937, respondent Albert V. Steffen was in the employ of the complainant Santa Cruz Oil Company as a ship watchman on board the "S.S. Prentiss", which said vessel was then and there moored in the harbor of Long Beach, California.

That thereafter said Steffen filed his claim for compensation with the respondent Pillsbury as Deputy Commissioner for an alleged injury to said respondent Steffen's back purportedly sustained by said respondent when descending and slipping on a ladder provided as a means of ingress and egress to the said steamship, "S.S. Prentiss." That said matter being placed in issue by the answer of complainants herein was thereafter heard before Pillsbury as Deputy Commissioner and said Pillsbury on the 22d day of August, 1941, made an order rejecting said claim on the ground that claimant's service at the time of his alleged injury was not of a maritime character. [5]

IV.

That thereafter said Steffen instituted a proceeding in the above-entitled court as libelant against complainants as respondents therein claiming that said matter and libelant's claim under said compensation act was of a maritime nature, which said contention of Steffen was sustained by said court and

thereafter was sustained by the United States Circuit Court of Appeals, Ninth Circuit on the 9th day of July, 1943, in a decision entitled Hillcone SS. Co., et al. vs. Steffen and reported in 136 Fed. (2d) 965.

V.

That pursuant to said decision of the Circuit Court of Appeals, additional hearings were held before said Pillsbury on September 10, 1943, and September 27, 1943, and oral and documentary evidence was received and the matter then submitted for decision.

VI.

That thereafter on January 11, 1944, said Pillsbury filed his decision, "Compensation Order—Award of Compensation" in words and figures as follows, to wit:

Such investigation in respect to the above entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law, and compensation order having been entered on August 22, 1941 rejecting the claim for compensation in this proceeding upon the ground that claimant's service at the time of his injury was not maritime in character, and said order having been reviewed by the United States District Court and Circuit Court of Appeals, and said order annulled by said courts with direction to the Deputy Commissioner to take jurisdection, and further hearing having been held and the matter again submitted for decision, the Deputy Commissioner makes the following:

FINDINGS OF FACT

"That during the month of February, 1938, the claimant above named was in the employ of the employer above named, Santa Cruz [6] Oil Company, at Long Beach in the State of California in the 13th Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by the Associated Indemnity Corporation:

"That claimant, Albert V. Steffen, was employed at said time as a ship watchman on board the S.S. "Prentiss." That during said month, the exact date not ascertainable, claimant sustained personal injury occurring in the course of and arising out of said employment and resulting in disability as follows: While descending a gangplank from said ship to the dock the gangplank fell, causing claimant to sustain a sharp contusion to his lower back. That said contusion aggravated and exacerbated a previous quiescent osteo-arthritis of the back, causing it to become painful and subsequently disabling;

"That claimant orally notified Fred H. Cordes, District Manager of the employer, Hillcone Steamship Company, under whom claimant worked directly, on the day of his injury and on various occasions thereafter, that he had sustained said fall, and was in pain as a result thereof. That the employer did not thereafter or at any time make report of said injury to the Commission or to the Deputy Commissioner of this Compensation District as re-

quired by Section 30(a) of the Longshoremen's and Harbor Workers' Compensation Act. That the claim for compensation herein has been filed within the time required by law;

"That written notice of injury was not given within thirty days after the date of such injury, but that the employer had actual knowledge of the injury and that the employer has not been prejudiced by failure of claimant to give notice;

"That the employer did not furnish claimant with medical treatment, etc., in accordance with Section 7(a) of the said Act, or at all. That the employer assisted claimant in getting admission [7] to the United States Marine Hospital as a seaman for the treatment of his condition;

"That the average annual earnings of the claimant herein at the time of his injury amounted to the sum of $1500.00;

"That claimant continued in his employment with distress and under medical care until August 5, 1938, when he ordered said United States Marine Hospital. His wages were paid to and including August 4, 1938. He was discharged from said hospital on December 22, 1941, and was continuously disabled from labor until said date. During said time he was ill from heart trouble and active arthritis of the lower back, right knee and left foot. The arthritis of his lumbar spine was exacerbated by his injury and was an important portion of his illness. The other conditions mentioned above were not the result of, or exacerbated by, said injury. Compen-

sation due for said period, 176⅜ weeks at $19.22 a week, is $4410.71, no part of which has been paid;

"That claimant's attorney, A. A. Goldstone, of Los Angeles, has rendered legal service to claimant in the prosecution of his claim since the return of the file from the United States Circuit Court of Appeals, for which a fee is approved in the sum of $150.00 and lien granted therefor upon compensation herein awarded. His disbursements, if any, are to be allowed for, when a statement thereof is submitted.

"Upon the foregoing facts, the Deputy Commissioner makes the following:

AWARD

That the employer, Hillcone Steamship Company and Santa Cruz Oil Company, and the insurance carrier, Associated Indemnity Corporation, shall pay to the claimant compensation as follows: To claimant the sum of $4410.71, less however the sum of $150.00 to be deducted therefrom and paid to claimant's attorney, A. A. Goldstone, upon his lien for attorney's fee. [8]

Given under my hand at San Francisco, California, this 11th day of January, 1944.

WARREN H. PILLSBURY
Deputy Commissioner
13th Compensation District

VII.

That no proceedings for the suspension or setting aside of said compensation order filed January 11,

1944, have ever been instituted as provided in Subdivision (b) of Section 921 of said Act, or elsewhere or at all. Under the provisions of said Act, the said order became effective when filed on January 11, 1944, and except for these proceedings to suspend or set aside said order would become final at the expiration of thirty days after said January 11, 1944.

VIII.

That said compensation order is not in accordance with law in the following particulars:

(a) That there was no substantial evidence to warrant the finding of fact in said order of January 11, 1944, that the alleged injuries of respondent Steffen were sustained during the month of February, 1938.

(b) That said Pillsbury should have found, but failed to find, that the claim for the alleged injuries of Steffen was barred by the provisions of Subdivision (a) of Section 919 of 33 U. S. Code.

(c) That said Pillsbury erroneously applied to the said claim the provisions of 33 U. S. Code, Section 930(f), which said section was not added to the said Longshoremen's and Harbor Workers' Compensation Act until June 25, 1938.

(d) That there is no substantial evidence to support the finding of fact that claimant is entitled to compensation for a [9] period of 176⅜ weeks at $19.22 a week or to a total of $4,410.71 or to any other sum.

IX.

That complainants have no adequate nor any remedy other than by this proceeding which is brought pursuant to the provisions of Section 921 of said Act which provides that if not in accordance with law, a compensation order may be suspended or set aside in whole or in part through injunction proceedings brought by any party or interest against the Deputy Commissioner making the order and instituted in the said District Court for the Judicial District in which the injury occurred, and that proceedings for suspending or setting aside of compensation order whether revoking a claim or making an award shall not be instituted otherwise than as provided in said Section 921.

X.

That all of said proceedings before the Deputy Commissioner are contained in a file of the Deputy Commissioner under claim No. 1545, case No. 2739-1, together with the testimony of all witnesses taken before the said Deputy Commissioner in connection with the alleged accident of said Steffen.

That the Deputy Commissioner should be required to file with the clerk of this court, at a time to be fixed by the court, a certified copy of all proceedings had before him, together with all exhibits, transcripts of testimony, letters and documents of every nature and description received by said Deputy Commissioner in consideration of said claim.

Wherefore, complainants pray that process in due form of law according to the course of this

Honorable Court may issue and that respondents may be cited to appear and answer all and singular the matters hereinbefore set forth and that the order of said Deputy Commissioner filed January 11, 1944 be set aside and declared a nulli- [10] ty and that a mandatory injunction be issued herein setting aside and restraining enforcement of said purported order dated January 11, 1944, and that the respondents be permanently enjoined from making or attempting to make any further orders with respect to said proceeding; that pending the hearing of the cause or in less than three days' notice to the parties interested and the Deputy Commissioner, this Honorable Court issue an interlocutory injunction allowing the stay of such payments pending the determination of this cause; and for such other further and different relief as to the Court may seem justified, and for costs incurred herein.

SYRIL S. TIPTON
Proctor for Complainants

State of California,
County of Los Angeles—ss.

Syril S. Tipton, being by me first duly sworn, deposes and says: that he is the Attorney for complainants and authorized to make this verification in the above entitled action; that he has read the foregoing Complaint for Injunction and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief and as to those matters that he believes it to be true.

That he makes this verification for and on behalf of said complainants.

SYRIL S. TIPTON

Subscribed and sworn to before me this 24 day of January, 1944.

DELLA ALLAIRE
Notary Public in and for said County and State

[Seal]

My Commission expires October 15, 1946.

[Endorsed]: Filed Jan. 25, 1944. [11]

[Title of District Court and Cause.]

ANSWER OF RESPONDENT ALBERT V. STEFFEN

Comes now the respondent Albert V. Steffen, and answering the Complaint herein, admits, denies, and alleges as follows:

I.

Admits the allegations in paragraphs I and II of said complaint.

II.

Admits the allegations in paragraph III of said complaint, except as to the date of said accident, which was in February, 1938, and not in February, 1937, and except as to the manner in which said accident occurred, and in this connection this respondent alleges that a ladder extended from the

bow of the S.S. Prentiss to a pontoon adjacent to the vessel, and this was the means of access to and departure from the ship; that respondent [12] was leaving the vessel and was descending the ladder when the ladder shifted or became loosened at the place where it was attached to the bow of the boat; that the ladder "let go" and as a result, this respondent was thrown and dropped eight or ten feet from the ladder onto the pontoon, landing on his back.

Further answering said paragraph III of said complaint, as to the time and the manner in which said accident occurred this respondent refers to the transcripts of testimony taken at the hearings before the respondent Warren H. Pillsbury on February 5, 1941, March 18, 1941, April 17, 1941, September 10, 1943, and September 27, 1943 (A.M. and P.M.), a copy of which transcript duly certified is on file in the office of the Clerk of the above-entitled court, and by this reference made a part hereof.

III.

Admits the allegations contained in paragraphs IV, V, VI, and VII of said complaint.

IV.

Denies generally and specifically each and every allegation contained in paragraph VIII of said complaint except that this respondent admits that an error was made in the computation of compensation in that compensation for 176-3/7 weeks at

$19.22 a week amounts to $3390.95 instead of $4410.71 as awarded.

Further answering said paragraph VIII, this respondent alleges that complainants have admitted the injury to this respondent and waived all defenses to the claim of this respondent except the jurisdictional defense as to whether the employment of this respondent at the time of his injury was maritime in character, and this respondent alleges that the issue as to the maritime character of this respondent's employment at the time of his injury was determined in favor of this respondent and adversely to complainants and that said determination has become final.

Further answering said paragraph VIII, this respondent alleges that the complainants had actual knowledge of said acci- [13] dent sustained by this respondent immediately after the occurrence of said accident; that said complainants promised and assured this respondent that this respondent would be taken care of; that complainants secured the admission of this respondent into the United States Marine Hospital; that this respondent trusted complainants and relied upon said promises and upon said conduct and was thereby lulled into a sense of security, and that complainants are estopped to assert the alleged defenses or claims contained in said paragraph VIII of said complaint or any defenses to the claim of this respondent for compensation for his injury sustained as hereinabove alleged.

V.

This respondent admits the allegations contained in paragraphs IX and X of said complaint.

For a second, separate, and distinct answer and defense to the Complaint herein, this respondent alleges as follows:

I.

That, as shown by the transcripts of testimony taken before the respondent Warren H. Pillsbury, copy of which is on file herein, the findings of fact in the compensation order complained of, except the computation in the finding as to the total amount of compensation due, are supported by the evidence and that under the law such findings are final and conclusive and not subject to judicial review.

Wherefore this respondent prays that judgment be entered herein remanding the case to the deputy commissioner for the sole purpose of making a new computation in the finding with reference to the total compensation due and that the compensation order be in all other respects affirmed, and with said judgment, that the complaint be dismissed.

A. A. GOLDSTONE and
WM. P. LORD
By A. A. GOLDSTONE
Proctors for Respondent
Albert V. Steffen [14]

State of California,
County of Los Angeles—ss.

A. A. Goldstone, being first duly sworn on behalf of the respondent Albert V. Steffen, deposes and

says: That he has read the foregoing Answer of Respondent Albert V. Steffen and knows the contents thereof, and the same is true of his own knowledge except as to matters which are therein stated on information and belief, and as to those matters that he believes it to be true; that said respondent is absent from the County of Los Angeles, where his attorney has his office, and that affiant is said respondent Albert B. Steffen's attorney and therefore makes this affidavit.

A. A. GOLDSTONE

Subscribed and sworn to before me this 10th day of March, 1944.

DON R. LEHMAN
Notary Public in and for said County and State

[Seal]

Received copy of the within Answer this 10 day of March, 1944.

SYRIL S. TIPTON
Attorney for Complainants

Received copy of the within Answer this 10th day of Mar., 1944.

CHARLES H. CARR
U.S. Attorney
R. McKAY
Attorney for.....

[Endorsed]: Filed Mar. 10, 1944. [15]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUMMARY JUDGMENT

To the Complainants Herein and to Syril S. Tipton, Their Attorney:

You and each of you will please take notice that on March 27, 1944, at the hour of 10:00 o'clock A.M., or as soon thereafter as counsel may be heard, the respondent Albert V. Steffen, by his attorneys, will move this Honorable Court to enter upon the pleadings and upon the record herein summary judgment in favor of this respondent, dismissing the action, and in support thereof this respondent says:

1. That as shown by the pleadings and record filed herein, the complaint does not state a cause of action or claim against this respondent upon which relief could be granted.

2. That as shown by the pleadings and record filed herein, the findings of the respondent deputy commissioner in the com- [16] pensation order complained of are supported by evidence in the transcripts of testimony taken at the hearings before the deputy commissioner and, under the law, said findings of fact are final and conclusive and not subject to judicial review.

3. That as shown by the pleadings and the record filed herein, the compensation order complained of is in all respects in accordance with the law.

4. That the pleadings show that there is no issue as to any material fact and that the respondents

are, as a matter of law, entitled to judgment as prayed for in the answer, remanding the case and dismissing the complaint.

A. A. GOLDSTONE and
WM. P. LORD
By A. A. GOLDSTONE
Proctors for Respondent
Albert V. Steffen [17]

Received copy of the within Notice this 10th day of March, 1944.

SYRIL S. TIPTON
Attorney for Complainants

Received copy of the within Notice this 10th day of Mar., 1944.

CHARLES H. CARR
U. S. Attorney
R. MacKAY
Attorney for.....

[Endorsed]: Filed Mar. 10, 1944. [21]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT WARREN H. PILLSBURY, COMMISSIONER

Now comes the Respondent, Warren H. Pillsbury, deputy commissioner, United States Employees' Compensation Commission, and for his answer to the complaint herein:

1. Admits the allegations contained in paragraphs numbered 1 and 2.

2. Admits the allegations contained in paragraph

numbered 3, except as to the date of the alleged injury which was February, 1938, and not February, 1937, and except as to the manner in which the accident occurred, as to both of which facts respondent refers to the transcripts of testimony taken at the hearings before him on February 5, 1941, March 18, 1941, April 17, 1941, September 10, 1943, and September 27, 1943 (a.m. and p.m.), a copy of which transcript duly certified is on file in the office of the Clerk of the above entitled court, and by this reference made a part hereof. [22]

3. Admits the allegations contained in paragraphs numbered 4, 5, 6, and 7.

4. Denies the allegations contained in paragraph numbered 8 except that respondent admits that an error was made in the computation of compensation in that compensation for 176-3/7 weeks at $19.22 a week amounts to $3390.95 instead of $4410.71 as awarded.

5. Admits the allegations contained in paragraphs numbered 9 and 10, and attaches the record considered by the deputy commissioner prior to filing of the compensation order complained of.

Further answering the complaint, the respondent deputy commissioner avers that, as shown by the transcripts of testimony taken before him, copy of which is on file herein, the findings of fact in the compensation order complained of, except the computation in the finding as to the total amount of compensation due, are supported by evidence and, under the law, such findings are final and conclusive and not subject to judicial review.

Wherefore, this respondent prays that judgment be entered herein remanding the case to the deputy commissioner to make a new computation in the finding with reference to the total compensation due and that the compensation order be in all other respects affirmed, and with such judgment, that the complaint be dismissed.

CHARLES H. CARR
United States Attorney
RONALD WALKER
Assistant United States Attorney
Attorneys for Respondent Pillsbury

[Endorsed]: Filed Mar. 15, 1944. [23]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUMMARY JUDGMENT

To the Complainants Herein, and to Syril S. Tipton, their attorney:

You and each of you will please take notice that on the 27th day of March, 1944 at the hour of ten o'clock A. M. or as soon thereafter as counsel may be heard, Respondent Warren H. Pillsbury, Deputy Commissioner, by his attorneys, will move this Honorable Court to enter upon the pleadings and upon the record herein summary judgment in favor of defendant, dismissing the action, and in support thereof respondent says:

1. That, as shown by the pleadings and record filed herein, the complaint does not state a cause of action or claim against this respondent upon which relief could be granted.

2. That, as shown by the pleadings and record filed herein, the findings of the deputy commissioner in the compensation order [24] complained of are supported by evidence in the transcripts of testimony taken at the hearings before the deputy commissioner and, under the law, said findings of fact are final and conclusive and not subject to judicial review.

3. That, as shown by the pleadings and the record filed herein, the compensation order complained of is in all respects in accordance with law.

4. That the pleadings show that there is no issue as to any material fact and that the respondents are, as a matter of law, entitled to judgment as prayed for in the answer, remanding the case and dismissing the complaint.

CHARLES H. CARR
United States Attorney
RONALD WALKER
Assistant United States
Atttorney
Attorneys for Respondent
Pillsbury

[Endorsed]: Filed Mar. 15, 1944. [25]

[Title of District Court and Cause.]

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR JUDGMENT

Plaintiffs filed this proceeding for judicial review of the administrative action under the provisions of the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927 (44 Stat. 1424, 33 U.S.C.A. sec. 901, et seq.).

The facts in this case, as found by the deputy commissioner, are substantially as follows:

> "That during the month of February, 1938, the claimant above named was in the employ of the employer above named, Santa Cruz Oil Company, at Long Beach in the State of California in the 13th Compensation District, established under the provisions of the Longshoreman's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by the Associated Indemnity Corporation;
>
> "That claimant, Albert V. Steffen, was employed at said time as a ship watchman on board the S.S. 'Prentiss'. That during said month, the exact date not ascertainable, claimant sustained personal injury occurring in the course of and arising out of said employment and resulting in disability as follows: While descending a gangplank from said ship to the dock the gangplank fell, causing claimant to sustain a sharp contusion to his lower back. That said contusion aggravated and exacerbated a previous quiescent osteo-arthritis of

the back, causing it to become painful and subsequently disabling;

"That claimant orally notified Fred H. Cordes, District Manager of the employer, Hillcone Steamship [26] Company, under whom claimant worked directly, on the day of his injury and on various occasions thereafter, that he had sustained said fall, and was in pain as a result thereof. That the employer did not thereafter or at any time make report of said injury to the Commission or to the Deputy Commissioner of this Compensation District as required by Section 30(a) of the Longshoremen's and Harbor Worker's Compensation Act. That the claim for compensation herein has been filed within the time required by law;

"That written notice of injury was not given within thirty days after the date of such injury, but that the employer had actual knowledge of the injury and that the employer has not been prejudiced by failure of claimant to give notice;

"That the employer did not furnish claimant with medical treatment, etc., in accordance with Section 7(a) of the said Act, or at all. That the employer assisted claimant in getting admission to the United States Marine Hospital as a seaman for the treatment of his condition;

"That the average annual earnings of the claimant herein at the time of his injury amounted to the sum of $15.00.00;

"That claimant continued in his employment with distress and under medical care until August 5, 1938, when he entered said United States Marine Hospital. His wages were paid to and including August 4, 1938. He was discharged from said hospital on December 22, 1941, and was continuously disabled from labor until said date. During said time he was ill from heart trouble and active arthritis of the lower back, right knee, right foot and left foot. The arthritis of his lumbar spine was exacerbated by his injury and was an important portion of his illness. The other conditions mentioned above were not the result of, or exacerbated by, said injury. Compensation due for said period, 176⅜ weeks at $19.22 a week, is $4410.71, no part of which has been paid;"

On August 22, 1941, the deputy commissioner filed a previous compensation order in this case in which he rejected the claim for compensation upon the ground that claimant's employment was not maritime and that his injury did not come within the purview of the Longshoremen's Act. Claimant thereafter brought a proceeding for review of said order of rejection. The United States District Court for the Southern District of California, Central Division, set aside the order of rejection and the United States Circuit Court of Appeals, Ninth Circuit, affirmed the action of the district court and remanded the case to the deputy commissioner for

further action in conformity with the opinion. Several hearings were subsequently held by the deputy commissioner on September 10, 1943, and September 27, 1943, and upon the evidence adduced at said hearings, as well as upon the [27] evidence heard at the previous hearings, the deputy commissioner filed the compensation order of January 11, 1944, complained of.

Plaintiffs' complaint states four reasons (paragraph 8) why the compensation order allegedly is not in accordance with law. The reasons as alleged are in substance: (a) that there is no evidence for the finding that the injury occurred in February, 1938, (b) that the deputy commissioner failed to find that the claim was barred by the statute of limitations (the complaint refers to subdivision (a) of section 919 of 33 U.S.C.—this apparently is in error, as section 919 does not relate to the time limit for filing claims; reference was probably intended to section 913(a), which provides for the period within which a claim may be filed), (c) that section 930(f) (which was enacted June 25, 1938) of 33 U.S.C. is inapplicable to extend the period for filing the compensation claim in this case, and (d) that there is no evidence to support the finding that claimant is entitled to compensation for 176-3/7 weeks at $19.22 per week, or a total of $4410.71, or to any other sum.

Before proceeding to indicate the evidence which, in our opinion, supports the findings complained of ((a) and (d), supra), it may not be inappropriate

to invite the court's attention to the following well-established principles of compensation law:

The Longshoremen's Act should be liberally construed in favor of the injured employee or his dependent family: Baltimore & Philadelphia Steamboat Co. v. Norton, deputy commissioner, 284 U.S. 408 (1932); Fidelity Casualty Co. of New York v. Burris, 61 App.D.C. 228, 59 F.(2d) 1042 (1932); Associated General Contractors of America, Inc. et al. v. Cardillo, deputy commissioner, 70 App. D.C. 303, 106 F.(2d) 327 (1939); De Wald v. Baltimore & O. R. Co., 71 F.(2d) 819 (C.C.A. 4, 1934), certiorari denied October 8, 1934, 293 U.S. 581.

In the absence of substantial evidence to the contrary the presumption is "That the claim comes within the provisions of this Act": Section 20(a) of the Longshoremen's Act.

The burden is on the plaintiff to show that there was no [28] evidence before the deputy commissioner to support the compensation order complained of in the bill; Grant v. Marshall, deputy commissioner, 56 F.(2d) 654 (D.C. Wash. 1931); United Employees Casualty Co. v. Summerous, 151 S.W.(2d) 247 (Tex. 1941); Nelson v. Marshall, deputy commissioner, 56 F.(2d) 654 (D.C. Wash. 1931); Gulf Oil Corporation v. McManigal, deputy commissioner, 49 F.Supp. 75 (D.C. N.D. W.Va. 1943).

The findings of fact of the deputy commissioner supported by evidence should be regarded as final and conclusive and not subject to judicial review: South Chicago Coal & Dock Co., et al. v. Bassett,

deputy commissioner, 309 U.S. 251 (1940); Del Vecchio v. Bowers, 296 U.S. 280 (1935); Voehl v. Indemnity Insurance Co. of North America, 288 U.S. 162 (1933); Crowell, deputy commissioner v. Benson, 285 U.S. 22 (1932); Jules C. L'Hote, et al. v. Crowell, deputy commissioner, 286 U.S. 528 (1932), 71 C.J. 1297, sec. 1268; Parker, deputy commissioner v. Motor Boat Sales, Inc., 314 U.S. 244 (1941).

Logical deductions and inferences which may be and are drawn by the deputy commissioner from the evidence should be taken as established facts and are not judicially reviewable: Liberty Mutual Ins. Co. v. Gray, deputy commissioner, 137 F.(2d) 926 C.C.A. 9, 1943); Michigan Transit Corporation v. Brown, deputy commissioner, 56 F.(2d) 200 (D.C. Mich. 1929); Del Vecchio v. Bowers, 296 U.S. 280 (1935); Eastern Steamship Lines, Inc. v. Monahan, deputy commissioner, et al., 21 F.Supp. 535 (D.C. Me. 1937); Grain Handling Co. Inc. v. McManigal, deputy commissioner, 23 F.Supp. 748 (D.C. N.Y. 1938); Simmons v. Marshall, deputy commissioner , 94 F.(2d) 850 (C.C.A. 9, 1938); Lowe, deputy commissioner v. Central R. Co. of New Jersey, 113 F.(2d) 413 (C.C.A. 3, 1940); Parker v. Motor Boat Sales, Inc., 314 U.S. 244 (1941).

The deputy commissioner is not bound to accept the opinion or theory of any particular medical examiner. He may rely upon his own observation and judgment in conjunction with the evidence: [29] Liberty Stevedoring Co., Inc. v. Cardillo, deputy

commissioner, 18 F.Supp. 729 (D.C. N.Y. 1937); Joyce v. United States Deputy Commissioner, 33 F.(2d) 218 (D.C. Me. 1929); Jarka Corporation of Philadelphia v. Norton, deputy commissioner, 56 F.(2d) 287 (D.C. Penn. 1930); E. S. Booth v. Monahan, deputy commissioner, 56 F.(2d) 168 (D.C. Me. 1930); Zurich General Accident & Liability Insurance Co. v. Marshall, deputy commissioner, 42 F. (2d) 1010 (D.C. Wash. 1930); Baltimore & Ohio R.R. Co. v. Clark, deputy commissioner, 56 F.(2d) 212 (D.C. Md. 1932); Ryan Stevedoring Co., Inc. et al. v. Norton, deputy commissioner, et al., 50 F. Supp. 221 (D.C. E.D. Pa. 1943).

Notwithstanding sharp conflict in the evidence on question of disability, the injured employee's testimony alone is sufficient to sustain an award in his favor: Independent Pier Co. v. Norton, deputy commissioner, 54 F.(2d) 734 (C.C.A. 3, 1931).

The rights, remedies and procedure under the Longshoremen's Act are governed exclusively by the statute, and the powers properly to be exercised by the court are those only which are expressly conferred by the said Act: Associated Indemnity Corp. v. Marshall, deputy commissioner, 71 F.(2d) 235 (C.C.A. 9, 1934); Shugard v. Hoage, deputy commissioner, 67 App.D.C. 52, 89 F.(2d) 796 (1937); Luyk v. Hertel, 242 Mich. 445, 219 N.W. 721 (1928); Texas Indemnity Ins. Co. v. Pemberton, 9 S.W.(2d) 65 (Texas 1928); Nierman v. Industrial Comm., 329 Ill. 623, 161 N.E. 115 (1928); Town of Albion v. Industrial Commission, 202 Wis. 15, 231 N.W. 249 (1930). Compare also: Bassett, deputy commis-

sioner v. Massman Construction Company, 120 F. (2d) 230 (C.C.A. 8, 1941), cert. den. 62 S.Ct. 92.

The following is a reference to so much of the testimony taken before the deputy commissioner as is considered sufficient to show that the findings of fact in the compensation order complained of are supported by evidence. This narration is not intended to cover all of the testimony as, under the authorities, it is necessary only to show that there is evidence to support the findings of fact of the deputy commissioner. [30]

Albert V. Steffen, claimant, testified on February 5, 1941, that he was a watchman taking care of the SS Prentiss and had been working at that job since 1931 (T. 8, 9); that the vessel was undergoing repairs and structural changes at the time of the accident (T. 12); that as he was coming off the ship down a ladder, which extended from the bow to a sort of pontoon, the ladder let go, struck his knee and he landed on his back (T. 12); that at the time he was going down the ladder to answer a call from Mr. Cordes, his superior, and that the distance he fell was about 8 or 10 feet (T. 13); that he immediately told Mr. Cordes that he had a fall and the latter told him he would be all right; that he drove his superior in an automobile, but because of the flood conditions they were unable to continue; that his back pained him; that he again informed his superior of the accident and spent the next three days with his superior in Los Angeles, during which he had his back attended to by a physician (T. 14,

15); that his back got so bad he was unable to stay on the ship any more due to the dampness and to the stiffness and aching of his back and that he told Mr. Cordes that something had to be done about his back (T. 15); that Mr. Cordes sent him to the U. S. Public Health Service at San Pedro (T. 15, 16); and from there he was sent to the U. S. Marine Hospital at San Francisco; that his superior, Mr. Cordes, came to visit him at the hospital (T. 16); that his wages at the time of the injury were $125 a month, about $63 every two weeks (T. 18).

Claimant testified on April 17, 1941, that he told his superior that he had an accident on the ship (T. 2); that the latter went with him to the U. S. Public Health Service (T. 3); that the accident took place in March or the latter part of February, 1938; that it was at the time of the washing out of the bridge and of the big rain in 1938 (T. 4); that the first time he went to a physician was in February, 1938, and the physician to whom he went was one suggested by the lady who owned the penthouse where the claimant and his superilor, Mr. Cordes, stayed on the trip to Los [31] Angeles immediately after the injury (T. 14, 15); that he was also treated by a chiropractor (T. 15), an M.D. (T. 16), and that Mr. Cordes also wanted him to go to an osteopath whom he recommended (T. 18).

Claimant testified at the hearing of September 10, 1943, that he was discharged from the U. S. Marine Hospital on December 22, 1941 (T. 3).

Fred H. Cordes, claimant's superior, testified on March 18, 1941, that claimant's wage was $125 a month (T. 10).

Dr. Robert A. Bilafer testified at the hearing of April 17, 1941, that he is a physician and surgeon and a member of the staff of the U. S. Marine Hospital; that claimant was admitted to the hospital on August 5, 1948 (1938) (T. 5); that the chief complaint was arthritis and that claimant stated that 7 months ago he fell from his ship, striking his back on a pontoon (T. 6); that claimant could well have had an aggravation of a pre-existing arthritis of the spine, right knee and ankle, and that in his opinion it has given claimant considerable trouble since the date of the injury because of such aggravation (T. 7); that the back pain which claimant complains of could well have been caused by the aggravation (T. 8); that claimant was totally disabled for heavy physical work at the time of the hearing (T. 10).

It will be seen from the foregoing reference that the deputy commissioner's finding of fact, complained of, to the effect that claimant sustained an injury to his back in February, 1938, and that he was disabled as a result thereof from August 5, 1938, the date of his admission to the U. S. Marine Hospital, until at least his discharge therefrom on December 22, 1941, a period of 176-3/7 weeks, and that his wage rate was $125 a month, or $1500 a year, are supported by evidence and, under the authorities cited above, should be regarded as final and conclusive. Section 8(b) of the Act (33 U.S.C.A. sec. 908(b) provides, in effect, that in case of total disability compensation shall be paid on a basis of 66⅔ per cent [32] of the average weekly wages

during the continuance thereof. As claimant's annual wage was $1500, his average weekly wage, computed as provided in section 10(d) (33 U.S.C.A. sec. 910(d)), was 1/52 part of said average annual earnings, or $19.22 per week, which, when multiplied by 176-3/7 weeks, amounts to $3390.95. The computation of the deputy commissioner in this respect was in error and the amount of the award should have been as just stated instead of $4410.71 as awarded. There is no allegation in the bill that the deputy commissioner erred in applying section 10 of the compensation law (the section setting forth the formulae for determining average weekly wage), and the complaint is therefore construed as calling attention to the error in mathematical computation of compensation.

The Compensation Claim was Timely Filed

As stated above, it is alleged in paragraph 8 of the complaint, in effect, that (b) the deputy commissioner failed to find that the claim was barred by the statute of limitations, and (c) that section 930(f) of 33 U.S.C. is inapplicable to extend the period for filing the compensation claim in this case.

Section 13(a) of the Act (33 U.S.C.A. sec. 913(a)) provides, in effect, that claim for compensation shall be filed within one year after the injury. The term "injury", as used in this section, has been construed to mean "compensable injury",—NOT THE DATE OF THE ACCIDENT, but the time from which the employee had a basis under the statute upon which to claim compensation, such basis being

only the EXISTENCE OF DISABILITY FOR WORK RESULTING IN A LOSS OF WAGES. DiGiorgio Fruit Corp., et al. v. Norton, deputy commissioner, et al., 93 F.(2d) 119 (C.C.A. 3, 1937), cert. den. 302 U.S. 767; Potomac Electric Power Co. v. Cardillo, deputy commissioner, 107 F.(2d) 962 (App. D.C. 1939); Kropp v. Parker, deputy commissioner, et al., 8 F. Supp. 290 (D.C.Md. 1934). Therefore, within the application of section 13(a) as interpreted by the decisions above cited, all under the Longshoremen's Act, the claim in the present case was [33] timely filed.

Claimant was not disabled for work until August, 1938, when he entered the Marine Hospital, so that if section 13(a), supra, WERE THE ONLY section applicable in this case with respect to the time for filing claim, it would have been necessary for claimant to file his claim not later than August, 1939. Section 13(a), however, is not the only section which is applicable. Section 30(f) of the Act (33 U.S.C.A. sec. 930(f)) provides that where the employer has knowledge of an injury of an employee and fails, neglects or refuses to file a report thereof in the manner and as required by the provisions of subdivision (a) of section 30 of the Act, the limitations of section 13(a) shall not begin to run against the claim or in favor of either the employer or the carrier until such EMPLOYER'S REPORT shall have been filed. The evidence shows that the employer knew of the injury and it is uncontradicted that no such required report was ever filed with the deputy commissioner. The employer and car-

rier apparently do not contend that they gave notice to the deputy commissioner, but they maintain that because section 30(f) was added to the Act on June 25, 1938, which was subsequent to the date of the accident, it did not have the effect of extending claimant's time for filing claim for compensation resulting from the disability which began on August 5, 1938.

Section 30(f) in effect tolls the limitations of section 13(a) until such time as the report of injury which the statute requires has been filed by the employer or carrier with the deputy commissioner. It is well recognized that a statute of limitations is remedial or procedural legislation and that the period in which to file a claim may be extended by amendment to the law where the right to file a claim had not expired prior to the amendment. Orton v. Olds Motor Works, 240 N.Y.S. 570, 229 App.Div. 46 (1930); Wentz v. Price Candy Company, 168 S.W.(2d) 462 (Mo. App. 1943); Seneca v. Yale and Towne Manufacturing Company, 16 Atl.(2d) 754, 142 Pa.Super. 470 (1941); Matkosky v. Midvale Company, 18 Atl.(2d) [34] 102, 143 Pa.Super. 197 (1941). In the Orton case, supra, the injury occurred on February 14, 1928. At that time the law provided that the right to claim compensation should be barred unless within one year after the accident a claim for compensation was filed with the Commission. The law was amended, effective July 1, 1928, permitting the filing of a claim for compensation after the expiration of one year from the date

of accident, but not exceeding two years, where the Commisison shall find that such filing shall be in the interest of justice. Claimant filed his claim on March 6, 1929, which the Commission accepted. Upon a review of the compensation award the court said that it saw "no reason why the amendment should not apply to claims accrued BUT NOT EXTINQUISHED. This claim had not been extinguished at the time the amendment went into effect. The year for filing a claim did not expire until the following February. The amendment became part of the provision of the statute dealing with rules of limitation in the prosecution of a claim affecting the remedy only and not the substantive right to compensation. The period of limitation, though it had begun to run, could be extended by the board."

There have been no decisions under the Longshoremen's Act holding whether or not section 30(f), extending the period for filing claims, applies to claims for injuries which had accrued but which had not expired at the time of the effective date of the amendment. In two cases, however, involving an amendment to section 22 of the Act, the courts have held that the amendment was retroactive. In the case of New Amsterdam Casualty Company v. Cardillo, deputy commissioner, 108 F.(2d) 492 (App.D.C.), the court said:

> "We think Congress had the power TO EXTEND or to contract the PERIOD OF LIMITATION as applicable to an indemnity claim EITHER PENDING or subsequently brought." (Emphasis supplied)

See to the same effect, Bethlehem Shipbuilding Corporation v. Cardillo, deputy commissioner, 102 F.(2d) 299 (C.C.A. 3, 1939). [35]

The case of Paramino Lumber Co. v. Marshall, deputy commissioner, 309 U.S. 370, which originated in the ninth U. S. Circuit, involved a private Act of Congress which directed the deputy commissioner to review a compensation order filed under the Longshoremen's Act although the right to do so under the latter Act HAD EXPIRED five years previously. In the court below, 27 F.Supp. 823, and before the Supreme Court, the employer and carrier had strenuously urged that "the lapse of the time limit on such statutory causes of action not only bars the remedy but destroys the liability as well." (See argument for appellants on page 373 of 309 U.S. and dissenting opinion in the court below, 27 F.Supp. 823, 826). The Supreme Court stated in this respect:

> "The argument of appellants is that the original award was an adjudication on which further review was barred prior to the enactment of the private act; that thereby rights and obligations were finally determined, the deprivation of which took from appellants a substantive immunity from further claims of Clark and created in Clark new substantive rights.
>
> "* * * But we do not agree that the immunity obtained by the lapse of the time for review is the type of immunity which protects

its beneficiary from retroactive legislation authorizing review of the claim. This private act does not set aside a judgment, create a new right of action or direct the entry of an award. The hearing provided for is subject to the provisions of the general act for longshoremen's and harbor workers' compensation. It does not operate to create new obligations where none existed before. * * *

"It is unimportant whether the claim persisted after the bar or ended with the running of limitation. To cure a fault of administration Congress may validly enact this act."

If, then, a barred right may be RESTORED by a private relief measure (barred after lapse of time), it would seem clear a fortiori that a time limit may be extended by a general amendment to the law and such extension apply in cases in which the bar of limitations has not as yet operated. This case should be regarded as controlling in principle.

It would appear, therefore, in the instant case, that claimant, who was injured in February, 1938, and whose disability began in August, 1938, came within the protection of section 30(f) [36] which became law on June 25, 1938, which was long before the expiration date for filing claim under the law as it stood prior to its amendment.

CONCLUSION

In view of the above it is respectfully submitted that the findings of the deputy commissioner, com-

plained of, with reference to the date of injury, the nature and extent of claimant's disability resulting therefrom, the average weekly wage, and the weekly rate of compensation, are all supported by evidence and are, therefore, final and conclusive. In view of the error in computation as to the total amount of compensation due, it is respectfully urged that the case be remanded to the deputy commissioner to compute correctly the total amount of compensation due, after having rendered judgment finding that the compensation order in all other respects is in accordance with law, with dismissal of the complaint as to all other matters.

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Received copy of the within Memorandum this 15th day of March, 1944.

A. A. GOLDSTONE
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[Endorsed]: Filed March 15, 1944. [37]

[Title of District Court and Cause.]

MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR JUDGMENT

Point I

The Answer of the Respondent, Warren H. Pillsbury, deputy Commissioner, United States Employees' Compensation Commission, and the Answer of the Respondent, Albert V. Steffen, both admit that there has been an error in the computation, so that it is admitted by the pleadings that in no event should the Award be for more than 176⅜ weeks at $19.22 a week, which according to my figures is the sum of $3389.92.

It being admitted that there was an error in the computation, the Motion to Dismiss should not be granted, and a decree should enter herein, fixing the Award in the correct amount. [38]

Point II.

It will have to be conceded that under the law that if the deputy commissioner's findings are supported by evidence they should be affirmed, so that the real point in issue here other than on the amount, as above set out, is whether or not the Respondent, Albert V. Steffen, had a cause of action against the Complainants herein, as he did not file his claim with the commissioner within the period of one year from February, 1938, the date found by the commissioner to be the date of injury, as

provided by Section 13(a) of the Act (33 U.S.C. 913(a)).

Facts:

A. It is undisputed that the accident causing the injury to the Respondent, Albert V. Steffen, occurred in February, 1938, and this fact was so found by the commission, supported by substantial evidence.

B. It is undisputed that the Respondent, Albert V. Steffen, did not file a claim with the commissioner until on or about January 20, 1941, and that thereafter at the first hearing the defendants raised the issue that the claim was barred by virtue of Section 13 of the Act.

C. It is undisputed that in February of 1938 Section 13(a) of the Act provided in effect that a claim should be barred unless filed within one year after the injury.

D. It is undisputed that Subdivision (f) of Section 30 of the Act, providing that Section 13(a) should not begin to run until a report was filed with the commissioner, did not become effective until June 25, 1938.

The issue then is: Did the amendment of Section 30 of the Act by adding thereto Subdivision (f) on June 25, 1938 extend the time within which the Respondent, Albert V. Steffen, could properly file his claim with the commissioner under the provisions of Section 13(a) of the Act? [39]

The Respondents have attempted to avoid the provisions of Section 13(a) of the Act as it existed in

February of 1938 by claiming that the injury received by Albert V. Steffens did not become a compensable injury until August of 1938, and that, therefore, the provision of Subdivision (f) of Section 30 of the Act would be applicable at the time of injury.

In support of this contention the Respondents have cited DiGiorgio Fruit Corp., et al. vs. Norton, 93 F.(2d) 119; Potomac Electric Power Co. vs. Cardillo, 107 F.(2d) 962 and Kropp vs. Parker, 8 F.Supp. 290.

In answer to this contention and to the cases cited by Respondents, we wish to call the attention of the Court to the fact that Steffens' injury was clearly patent, and he gave immediate notice to his employer of the injury, and such being the case the date of accident and the date of injury are one and the same.

Liberty Mutual Ins. vs. Parker, 19 F.Supp. 686—Chestnut, District Judge.

"This is a suit to set aside a Compensation Award by the deputy commissioner under the Longshoremen's and Harbor Workers' Compensation Act. There is no controversy as to the facts, the contention being only that the Award is not in accordance with law because the employee's claim was not filed "within one year after the injury", as required by Section 13(a) (33 U.S.C.A. 913(a)).

Briefly condensed, the facts as found by the Deputy Commissioner were as follows: The employee had been employed around the Baltimore

Harbor as a longshoreman for about thirty-five years and at the time of his accident and injury in the particular case, had been employed as a hatch boss for several years prior thereto by the employer the Baltimore Stevedoring Company, of which the Liberty Mutual Insurance Company was the insurer. During the first week in December, 1934, the employee, in the course of his usual work, slipped on a ship's deck and fell against the mast [40] catching his weight on his right thumb. He mentioned it to his foreman but no visible injury was apparent and the employee continued his work during the remainder of the day; but shortly thereafter his hand grew somewhat stiff and that evening a small knot appeared on the back of his hand which subsequently proved to be a ganglion resulting from the strain. It gradually grew larger until about a month thereafter the employee showed his hand to his personal physician who told him "it will have to be cut out"; and some months later he visited the Johns Hopkins Hospital where he was told that if his hand did not hurt or bother him he need do nothing about it. He made no complaint to the employer until February, 1936, when he found that the fingers of his right hand were being somewhat affected, and then applied to the office of his employer for medical treatment. He continued to work until May 5, 1936, when, at the employer's expense a surgical operation was performed which removed the ganglion, then about the size of a guinea egg, and he returned to work on May 25, 1936.

The employer made no report of the accident to the Deputy Commissioner until February 17, 1936; and the claimant filed no claim with the Deputy Commissioner until April 8, 1936, more than a year after the date of the accident. The claimant was not actually disabled from the accident (in the sense of loss of time from work) until May 5, 1936. The Deputy Commissioner found that the employer had not been prejudiced by failure to receive written notice of the accident because its foreman had been verbally notified at the time.

At the hearing of the claim the insured by its counsel, placed its objection to any award on the ground of lack of written notice within thirty days and failure to file claim within a year after the injury. But the former objection is not pressed, not being made in the plaintiff's bill of complaint here. The insurer does, however, earnestly press the second objection as an important [41] question of law despite the small amount of the award of only $34.35. It was stated by counsel at the hearing that although the amount of the award has actually been paid the suit was not moot because the insurer would have a right of recovery although it was intimated that the point was being insisted on in this case for decision as a precedent rather than as a basis for recovery.

The Deputy Commissioner based his legal conclusion in favor of the claimant on the case of Kropp v. Parker, Deputy Commissioner, 8 F.Supp. 290, decided in this court September 29, 1934. It

was there held that the term "injury" as used in section 913 was not necessarily synonymous with the word "accident" but should be construed in the sense of "compensable injury." So construed it was held that a claim for a latent injury was within time although not filed until more than one year after the accident where the injury, which finally resulted in a brain tumor, as found by the Deputy Commissioner, was not diagnosed until very shortly before the claim was filed and where the employee had not previously been disabled from work. There has apparently been no other federal decision on the precise point either prior or subsequent to the Kropp Case although I note that it was cited with apparent approval by Judge Adkins of the United States District Court for the District of Columbia in Commercial Casualty Insurance Company v. Hoage, Deputy Commissioner, 2 S.D.C.Reports, 26, 28. As stated in the opinion in the Kropp Case, the construction applied to the statute was in accordance with the majority of state court decisions on similarly worded workmen's compensation statutes. It is not intended in this case to depart in any way from the decision there made.

But the facts in this case are, in my opinion, clearly distinguishable from the Kropp Case in the important point that the injury sustained by the employee in this case became patent and fully observable almost immediately after the accident and more [42] than a year before the claim was filed. The swelling on the back of the claimant's hand be-

came apparent on the very evening of the accident and had increased to such a size within a month that he was definitely advised by his physician that it would have to be cut out. From his testimony at the hearing it is quite apparent that he was reluctant to have the operation and that he endeavored to abate the swelling by personal treatment in the use of hot water and other applications. As his work was not directly interfered with by the ganglion on the back of the hand and as he had no pain therefrom, he apparently preferred to go on working, rather than undergo the personal discomfort of a surgical operation which, however, he had been told would be necessary. Therefore we have a case where the injury sustained was practically contemporaneous with the accident and where the injury was clearly patent and not latent.

Nor is there any difficulty in distinguishing this case factually from the Kropp Case, when injury is construed as meaning "compensable injury." The claimant was advised within a month after the accident that he would need a surgical operation and by section 7, as amended (33 U.S.C.A. §907) he was entitled to receive this at the expense of the employer; such surgical treatment being classed by section 6 (33 U.S.C.A. §906) as a part of the compensation to which the employee is entitled.

I therefore conclude that the award in this case must be set aside as not in accordance with law, because the employee's claim was not filed within a year after the injury occurred.

Counsel may submit the appropriate order in due course."

The contention of these Respondents on this point and the case as cited by them is further answered by the following case:

Kobilkin vs. Pillsbury, 103 Fed.(2d) 667—Circuit Court of Appeals, Ninth Circuit; April 14, 1939. [43]

Certiorari granted (affirmed) rehearing denied.

Opinion by Healy, Circuit Judge.

"Appellant filed a claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. §901 et seq. Upon denial of his claim he brought suit by petition in equity to set aside the order of the deputy commissioner, invoking §21(b) of the act. The appeal is from a decree granting a motion to dismiss, addressed to the petition.

Appellant, as the pleading discloses, was employed by the Matson Navigation Company as a longshoreman. On June 7, 1935, during the unloading of a vessel a bag of sugar which was being raised from the hold dropped off a sling load and struck appellant on his left shouldder. It was found that he had sustained a bad bruise and in consequence he was wholly disabled for three weeks following the accident, during which time compensation was voluntarily paid him. Thereafter, although working with some physical impairment, he suffered no loss of wages on account of the injury until January 9, 1937. On the latter date he had a severe pain in his

shoulder, went to a physician of his own choice for treatment, and was later removed to a hospital, where he was operated upon on January 27, 1937 for excision of the subteloid bursa of the shoulder. At that time a separation of the bones of the shoulder at the acromio-clavicular articulation was noted. On March 3, 1937 appellant filed his claim.

The deputy commissioner denied the claim on the ground that it had not been filed within one year from the date of the last payment of compensation and was therefore barred. The question here is whether the ruling was proper. §13(a) of the act provides, 'the right to compensation for disability under this chapter shall be barred unless a claim therefor is filed within one year after the injury * * * except that if payment of compensation has been made without an award on account of such injury * * * a claim may be [44] filed within one year after the date of the last payment.' 33 U.S. C.A. §913(a). §22, so far as material, provides that 'upon his own initiative, or upon the application of any part in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in section 919.' 33 U.S.C.A. §922.

Appellant makes the contention, probably war-

ranted by the record, that the acromio-clavicular dislocation had originally been overlooked and was not recognized until the performance of the operation for the removal of the bursa in January, 1937. The point involved is a novel one under the federal act, has been earnestly presented, and we have given it careful consideration. The argument is that the external injury or bruise was immediately recognized and compensated, but that the dislocation was not recognized until January, 1937, when it became disabling. The external and internal injuries, it is said, must be considered in effect as separate injuries; and since the latter was not discovered or discoverable until more than one year after the last payment of compensation for the former, the limitation does not commence to run until the existence of the injury can reasonably be ascertained.

Such is claimed to be the rule in respect of latent injuries under the state laws; and a number of cases, collected on the margin, are cited in support of the contention. Turning as they necessarily do on the wording of specific statutes, these cases are of little aid in the present inquiry. With the notable exception of the Nebraska authorities, we are unable to agree that they support appellant's views. An opinion of the District Court of Maryland in [45] Kropp vs. Parker, 8 F.Supp. 290, involving the Longshoremen's Act, leans in appellant's direction, but compare the later opinion of that court in Liberty Mutual Ins. Co. v. Parker, D.C., 19 F.Supp. 686. Needless to say, cases like Marsh v. Industrial

Accident Commission, supra, note, and Hoage v. Employers Liability Assurance Co., 62 App.D.C. 77, 64 F.2d 715, which deal with occupational diseases, are not to be accepted as authority in a situation like the present. Possibly the decision of the Third Circuit Court of Appeals in DiGiorgio Fruit Corp. v. Norton, 93 F.2d 119, may be classified among cases of the latter type. But if the condition there dealt with was purely an accidental injury, and not an occupational disease or infection, we are not able to understand the court's implied conclusion that it arose 'in the course of employment'.

Decisions arising under statutory provisions analogous to those of the federal act generally hold that the date of injury, and not the subsequent date when incapacity develops, is the one from which the time limitation must be reckoned. O'Esau v. E. W. Bliss Co., 188 App.Div. 385, 177 N.Y.S. 203; Williams v. Safety Casualty Co., 129 Tex. 184, 102 S.W.2d 178; Travelers Ins. Co. v. Burden, 5 Cir., 94 F.2d 880, 883; Cooke v. Holland Furnace Co., 200 Mich. 192, 166 N.W. 1013, L.R.A. 1918E, 552; Sandahl v. Department of Labor and Industries, 170 Wash. 380, 16 P.2d 623; Ehrhart v. Industrial Accident Commission, 172 Cal. 621, 627, 158 P. 193, 195, Ann.Cas. 1917E, 465; McLaughlin v. Western Union Telegraph Co., 5 Cir., 17 F.2d 574; Silva v. Wheeler & Williams, Ltd., 32 Hawaii 920.

(1, 2) The terms 'injury' and 'disability', separately defined in the statute, are not synonymous. It has not been suggested that the injury from which

appellant suffers is an occupational disease. Admittedly, it is an accidental injury arising in the course of employment. It was inflicted at the time of the accident, [46] not when its full extent was first noted at the later time. The trauma in fact resulted in an immediate though temporary disability for which appellant was paid compensation. The circumstance that appellant again became disabled a year and a half later, and the more serious nature of the injury was then for the first time recognized, does not change the situation. The claim was not filed until more than a year after the occurrence of the injury and more than a year after the last payment of compensation. Under the plain terms of §13(a) of the statute the claim is barred. If we turn to §22 and assume a change of condition we again encounter the statutory bar.

(3-5) It was the manifest Congressional intent to deny compensation in all cases of disability arising from accidental injury unless claim is filed within the time limited. No provision is made for exceptional cases. We agree that the act is to be liberally construed, but neither the deputy commissioner nor the courts have the power to legislate; and nothing short of legislation would make relief possible in a case like this.

(6, 7) Appellant should have filed his petition as a libel on the admiralty side of the district court. See Twin Harbor Stevedoring & Tug Co. et al. v. Marshall et al., 9 Cir., 103 F.2d 513, this day decided. The cause is remanded to that court with

instructions to treat the petition as a libel, the motion to dismiss as an exception to its sufficiency (Admiralty Rule Sup. Ct. 27, 28 U.S.C.A. following section 723), and to enter a decree of dismissal.

The decree is vacated with instructions to transfer to admiralty docket and decree a dismissal."

It can be seen from the above citations that the terms "injury" and "disability" under the Federal statutes are not synonymous, and that under the statute the injury in the matter before us occurred in February, 1938, as found by the referee in his Award. [47]

In this matter the commissioner found on substantial evidence that the injury occurred in February, 1938, and under the law as it existed at that time the year within which the respondent, Steffen, could perfect his claim by filing with the commissioner started to run in February of 1938 and expired in February of 1939, and upon the expiration of this period in February of 1939 the respondent, Albert V. Steffen, no longer had a claim, as the filing of the claim within the year is jurisdictional.

Does Subdivision (f) of Section 30 of the Act Have Retroactive Affect?

In this regard it must be remembered that Section 13(a), the limiting statute, was not amended or extended. The only action taken by Congress, effective June 25, 1938, was the addition of Subdivision (f) to Section 30 designating certain conditions under which Section 13(a) should not be operative.

The respondents have recited the following cases in support of their contention that Subdivision (f) of Section 30 should be given retroactive effect, these cases referring to Section 22 of the Act.

In the case of New Amsterdam Casualty Company vs. Cardillo, 108 F.(2d) 492, the Court held that the amendment to Section 22 was operative and further held that the language of the section indicated the intention of Congress to make it retroactive.

> Page 493. "The language of the amendment definitely indicates the intention of Congress to make it both retroactive and prospective, for the words are . . ."

In other words, in the New Amsterdam case the Court in conformity with the well established principle of law held that the statute clearly indicated that it was the intention that the statute should be retroactive, which is not true insofar as Subdivision (f) of Section 30 is concerned. [48]

Bethlehem Shipbuilding Corporation vs. Cardillo, 102 F.(2d) 299, cited by Respondents. As I interpret this case, it does not hold Section 22 of the Act to be retroactive, for at page 303 we find the following:

> "In other words the new Award made under Section 22 WAS NOT a retroactive application of Section 22, but a prospective one and in accordance with the law existing at the time it was made."

The third case cited by respondents on this point, Paramino Lumber Co. vs. Marshall, 309 U.S. 370, Court below 27 F.Supp. 823, I do not believe is in point for the reason that this case turned entirely on the question of the constitutionality of a private statute. In the Paramino case Congress passed a special Act directing the commissioner to give Marshall certain benefits. It did not in this Act change any of the sections of the law, and in the interpretation and holding in favor of Marshall the Court held that the private statute was merely curative. "It is an Act to cure a defect in administration developed in the handling of a compensable claim."

Statutes will be interpreted prospectively unless the language of the statute admits of no other construction.

> In re Cederbaum, 27 Fed.Supp. 1014;
> In re Gasterger & Co., 25 F.(2d) 642;
> Colgate vs. Palmolive Pub. Co. vs. U. S., 37 Fed.Supp. 794 at page 797.

> "Every statute operates on future Acts unless a contrary intent is expressly declared. The [49] Supreme Court has so stated in an unbroken line of cases from the earliest day to the present . . . a law is presumed in the absence of clear expression to the contrary to operate prospectively." Citing Hassett vs. Welch, 303 U.S. 303.

A statute is presumed to operate prospectively only.

In re Ritz-Carlton Restaurant and Hotel Co., 24 Fed.Supp. 78;

Com. Internal Revenue vs. Marshall, 91 F. (2d) 1010;

Sovereign vs. Casados, 21 Fed.Supp. 989.

California cases that a statute shall be interpreted prospectively only unless there is a clear intention to the contrary:

Montecito County Water District vs. Doulton, 193 Cal. 398;

Krause vs. Rarity, 210 Cal. 644.

Point III.

The filing of his claim with the deputy commissioner within one year from February, 1938, as provided by Section 13(a) of the Act was jurisdictional, and the failure of Steffen to file the claim within such time deprived the commissioner of jurisdiction to hear this matter.

Slade vs. Branham, 48 Fed.Supp. 769, November, 1942.

The filing of a claim within one year is jurisdictional.

Section 13 of the Act (33 U.S.C.A. 913);

Dawson vs. Jahneke, 33 Fed.Supp. 668, June 1940 at page 670. [50]

Compliance with the statute as to the time of filing is jurisdictional.

The Longshoremen's Act created in favor of the injured employee a right which he did not have before, a right unknown to the common law, and in order to assert such right the employee must bring his action or file his claim within the time specified in the Act.

Young vs. Hoage, 90 Fed.(2d) 395 at page 400.

". . . the rule is established that, where a statute gives a right of the character in question, a right unknown to the common law, and limits the time within which an action shall be brought to assert it, the limitation defines and controls the right.

In that view the objection made here is jurisdictional, and here there are no equities which we can properly consider."

Callahan vs. Chesapeake & O. Ry. Co., 40 Fed.Supp. 353, September 6, 1941; Swinford, District Judge.

"The case is before me on the defendant's motion to dismiss the complaint. The action is brought under and pursuant the provisions of the Federal Employer's Liability Act, Title 45 U.S.C.A. Sections 51 to 59 inclusive.

The alleged injury occurred on October 8, 1937. At that time the Act in question provided: 'No action shall be maintained under this chapter unless commenced within two years from the day the cause of action accrued.' Section 56.

On August 11, 1939, an amendment to the Act became effective which provided: 'No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.' [51]

This action was commenced October 5, 1940. It will thus be seen that the statute was changed from two years' limitation to three years' limitation before the two years had expired and that plaintiff commenced his action after the two years had expired but within three years from the time the action accrued.

(1) This question of limitation embodied in the Act giving the remedy is a jurisdictional fact which must appear from the face of the complaint.

(2, 3) The plaintiff's remedy arose under the Act that was in effect at the time the alleged injury occurred and not the Act of August 11, 1939. That became the law after the right to seek the remedy which he seeks here had accrued. Had there been no Employer's Liability Act he would have had no cause of action based on the allegations of his complaint. Since he adopts a remedy prescribed by this particular statutory enactment he is bound to assert the prescribed conditions in their entirety. The Act with its accompanying conditions, which was in existence at the time of the accident, not some later Act with different conditions. The limitation provisions of the Act are an integral part of the remedy which he seeks to assert and must be alleged and proved. Any other construction would present an

intolerable condition which would substitute judicial legislation for the constitutional authority of the legislative body through which and only through which this plaintiff ever had the particular remedy. One relying for redress upon a statute must bring the facts alleged within the statutory conditions.

The rule is stated in the syllabus from Morrison v. Baltimore & Ohio Railroad Company, 40 App. D.C. 391, Ann. Cas. 1914C, page 1026, as follows: 'Under the Federal Employers' Liability Act of June 11, 1906 (Fed.St.Ann. 1909 Supp. p. 585) the time within which the suit must be brought operates as a limitation of the liability itself as created, and not of the remedy alone. It is a condition attached to the right to sue at all. Time has been [52] made of the essence of the right, and the right is lost if the time is disregarded. The liability and the remedy are created by the same statute, and the limitations of the remedy are therefore to be treated as limitations of the right.'

(4) This is not a case in which a general statute of limitation is relied upon. In such case the statute must be plead. But it is a case in which the statutory remedy provides as a condition precedent that the action thereon must be commenced within a prescribed time. Such fact is jurisdictional and may be raised by motion to dismiss. Bell v. Wabash Ry. Co., 8 Cir., 58 F.2d 569.

(5) It is a well recognized rule of statutory construction that a law will not be considered retroactive unless such legislative intent clearly appears

from the context of the statute itself. Hasset v. Welch, 303 U.S. 303, 58 S.Ct. 559, 82 L.Ed. 858, and cases cited in the opinion in that case.

It is significant that the enactment of August 11, 1939, makes no such provision. Had Congress so intended it would undoubtedly have said so.

The motion to dismiss should be sustained. An order to that effect is this day entered."

It is respectfully submitted that the amount of the Award herein is admittedly in error, and that, therefore, the motion for Summary Judgment and dismissal of the Complaint should be denied.

It is respectfully submitted that the date of injury was found by the referee and supported by substantial evidence to be in February of 1938. That by virtue of the law the provisions of Section 13(a) of the Act became operative in February of 1938. That in order for the respondent, Steffen, to perfect the rights he might have by virtue of the Longshoremen's and Harbor Workers' Act it was incumbent upon him to file his claim with the deputy [53] commissioner within one year from the date of injury February, 1938. That the failure of the respondent, Steffen, to so file his claim with the deputy commissioner deprived the deputy commissioner of jurisdiction of the matter, as the Act which created the right in Steffen also created the limitation.

Wherefore, it is respectfully submitted that the motion for a Summary Judgment should be denied, and that the complainants herein should have a decree in conformity herewith.

Respectfully submitted,
SYRIL S. TIPTON
Attorney for Complainants

(Affidavit of Service by mail.)

[Endorsed]: Filed Mar. 22, 1944. [54]

[Title of District Court and Cause.]

MEMORANDUM OF DECISION

This is a proceeding on the admiralty side of the court where an injunction is sought to annul a compensation order and an award of compensation to Albert V. Steffen made by the Deputy Commissioner of the United States Employees' Compensation Commission after appropriate proceedings pursuant to Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, as amended. (44 Stat. 1424, 33 U.S.C.A., sec. 901 et seq.)

Another phase of the subject matter involved in the proceeding has been before both the district court in No. 1790-H of the files of this court, and the Circuit Court of Appeals in Hillcone S.S. Co. vs. Steffen (C.C.A. 9), 136 F.2d 967.

From any factual point of view the decision of the Deputy Commissioner is unassailable. South Chicago Co. v. Bassett, 309 U.S. 257; Crowell v. Benson, 285 U.S. 22. A stipulation made in open court at the hearing of this proceeding which conclusively concedes an erroneous mathematical com-

putation in the award obviates the necessity of remanding the matter to the Deputy Commissioner for correction.

There therefore remain but two questions of law for decision: (1) Did the Deputy Commissioner err as a matter of law in failing to [56] find that the claim in controversy was barred by Section 13a of the Act? Title 33 U.S.C.A. sec. 913(a), and (2) Did the Deputy Commissioner err as a matter of law in applying the provisions of Section 30f of the Act to the claim? Title 33, sec. 930(f) U.S.C.A.

We think that both questions should be answered in the negative and that both rulings of the Deputy Commissioner are in accordance with law and that neither ruling should be disturbed by the court in this proceeding.

The Longshoremen's and Harbor Workers' Compensation Act should be liberally construed in favor of the employee. Baltimore & Philadelphia Steamboat Co. v. Norton, etc., 284 U.S. 408, and every provision of the Act must be given effect, to consistently attain the particular purpose of this remedial legislation.

The general scheme and aim of this Act in the language of the Supreme Court in South Chicago Co. v. Bassett, supra, was to provide compensation to employees engaged in maritime employment for disability resulting from injury occurring upon the navigable waters of the United States, where recovery through Workmen's Compensation proceeding might not validly be provided by State law.

There can be no question as to the applicability of the Act in this proceeding, Hillcone S.S. Co. v. Steffen, supra.

Undoubtedly, under controlling authority, if the right of the claimant to compensation is to be determined solely by Section 13a of the Act, the award obviously is not in accordance with law. See Kobilkin v. Pillsbury, et al. (C.C.A. 9), 103 F.2d 667, affirmed by an equally divided court, 309 U.S. 619. We think, however, that the correlative and cooperative provisions of Section 30f of the Act should be applied, under the record in this proceeding, to secure to the claimant the benefits of the remedial legislation which was designed and intended by Congress for a category of workers in which Steffen has been classified.

Our Circuit Court of Appeals has, we think, in effect, stated in Marshall, Deputy Commissioner et al. v. Pletz, 1942 A.M.C., [57] Volume 1, pp. 631, 632, that the time limit prescribed by section 13a does not commence to run until the right to further payment of compensation is controverted.

Claimant's compensable disability has been conclusively found to have commenced August 5, 1938, although the accident which caused the compensable result occurred much earlier, but the basis for a claim under the Act is the existence of disability for work resulting in a loss of wages, and it is indisputably shown that the claimant, notwithstanding the earlier accident and injury, continued in his employment and was paid his usual wages to and

including August 4, 1938. Therefore August 5, 1938 is the date for the commencement of the one-year period for the filing of a claim under section 13a considered to the exclusion of other provisions of the Act. The substantive right of the claimant to statutory compensation under the Act had upon that date reached the point requiring procedural action to enforce the right by the application of all statutory methods. Section 30f of the Act, which was added to the Act by an amendment of June 25, 1938, provides that where the employer has knowledge of an injury of an employee and fails, neglects or refuses to file a report thereof in the manner and as required by subdivision (a) of Section 30 of the Act, the limitations of Section 13a should not begin to run against the claim of the injured employee or in favor of either the employer or carrier until such employer's report shall have been filed with the Commission.

The record here shows and the Deputy Commissioner has found that the employer had actual knowledge of the injury to the claimant on the day of the accident and on various occasions thereafter but that the employer at no time made any report thereof to the Commission or to the Deputy Commissioner.

It is thus clear, we think, that the claim here in issue, which was filed January 25, 1941, is not under the facts and circumstances shown by the record before this court, to be barred from consideration.

[58]

We do not think that Section 30f of the Act can be disregarded in ascertaining whether the substantive right of Steffen to compensation had lapsed, regardless of whether his statutory right accrued on the day of the accident or upon the stoppage of his wages by reason of the disability caused by the accident, but commencing subsequently. DiGiorgio Fruit Corporation et al. v. Norton, Deputy Commissioner et al. (C.C.A. 3), 93 F.2d 119; Potomac Electric Power Co. v. Cardillo, Deputy Commissioner (App. D.C.), 107 F.2d 962.

The change wrought by Section 30f operates under the record in no manner to affect vested or substantive rights or to impair the obligation of contract. The relationship between the employer, carrier and Steffen that is here involved is purely statutory and a mere change of procedure or substitution of remedies may operate retrospectively without running counter to any established principle of construction. Cf. Paramino Lumber Co. et al. v. Marshall, Deputy Commissioner et al., 309 U.S. 370; New Amsterdam Casualty Co. v. Cardillo, Deputy Commissioner (App. D.C.), 108 F.2d 492.

The right to invoke a bar against the claim for compensation because of lapse of time still remained in complainants, but the Congress by the amendment of June 25, 1938 imposed merely an additional procedural requirement upon them after they had notice or knowledge of the compensable incident. There is nothing in the legislation under consideration which limited the right of the Legis-

lature to enlarge procedural or remedial provisions so as to meet changing needs to better effectuate the purpose and aim of the Act. We think that by reason of complainants' failure to comply with all requirements of the Act they have not been prejudiced by the delay in the filing of the claim in controversy in this proceeding.

Findings of fact, conclusions of law and judgment ordered for respondents, vacating order for interlocutory injunction entered February 2, 1944, and upon the issues of complaint and answers [59] pursuant to stipulation as to error of computation of award with costs.

Respondents' attorneys will prepare, serve and present such findings of fact, conclusions of law and judgment within five days from notice of this memorandum of decision under Rule 7 of this court.

Dated April 25, 1944.

PAUL J. McCORMICK
United States District Judge

[Endorsed]: Filed Apr. 25, 1944. [60]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly to be heard on the 27th day of March, 1944, before the above entitled Court, the Hon. Paul J. McCormick, Judge Presiding, on motions for summary judg-

ment by the respondents, Warren H. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission for the Thirteenth District, and Albert V. Steffen, the respondent Albert V. Steffen appearing by its attorneys, A. A. Goldstone and Wm. P. Lord, A. A. Goldstone of counsel, the respondent Warren H. Pillsbury, Deputy Commissioner, appearing by Charles H. Carr, U. S. Attorney, and Clyde C. Downing, Assistant U. S. Attorney, Clyde C. Downing of [61] counsel, and the complainants, Hillcone Steamship Company, Santa Cruz Oil Company and the Associated Indemnity Corporation appearing by their attorney Syril S. Tipton; the parties hereto, through their respective counsel, having stipulated that an erroneous mathematical computation in the award was made by the Deputy Commissioner and that the correct amount of the award should be $3390.95 instead of the $4410.71 awarded, and counsel for the respective parties having stated that the only issues, it having been conceded by complainants that all other issues were properly determined by the Deputy Commissioner, in this proceeding are:

(1) Whether the Deputy Commissioner erred as a matter of law in failing to find that the claim of the respondent Albert V. Steffen for compensation under the Longshoremen's and Harbor Workers' Compensation Act was barred by the provisions of Section 13a of the Act; and (2) Whether the Deputy Commissioner erred as a matter of law in applying the provisions of Section 30f of the Act to the claim,

and the cause having been submitted on the record as certified by said Deputy Commissioner, oral arguments and briefs of counsel, and the Court having been fully advised in the premises, now makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

I.

That it is not true that there was no substantial evidence to support the finding of fact of the Deputy Commisisoner that the injuries of respondant Albert V. Steffen were sustained during the month of February, 1938, and it is true that such finding is supported by the evidence, and that from any factual point of view the decision of the Deputy Commissioner is unassailable.

II.

That the claim of respondent Albert V. Steffen was not barred by the provisions of Section 13a of the Longshoremen's and [62] Harbor Workers' Compensation Act.

III.

That the said Deputy Commissioner did not erroneously apply Section 30f of the Act to said claim; that the compensable disability of respondent Albert V. Steffen occurred on August 5, 1938, and that August 5, 1938, is the date for the commencement of the one-year period for the filing of a claim under said Section 13a of the Act; that the employer of the respondent Albert V. Steffen had actual knowledge of the injury to respondent Albert V.

Steffen on the day it occurred in February of 1938, and on various occasions thereafter, but that said employer at no time made any report thereof to the Commission or to the Deputy Commissioner; and that said Deputy Commissioner did not erroneously apply Section 30f of the Act to said claim of respondent Albert V. Steffen.

IV.

That respondents have not been prejudiced by the delay in the filing of the claim of respondent Albert V. Steffen.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing findings of fact, the Court concludes that from any factual point of view, the decision of the Deputy Commissioner is unassailable; that the claim of the respondent Albert V. Steffen is not barred by Section 13a of the Longshoremen's and Harbor Workers' Compensation Act; that the Deputy Commissioner did not err in applying Section 30f of the Act to the claim of the respondent Albert V. Steffen; that the order for the interlocutory injunction entered February 2, 1944, be vacated; and that the respondent Albert V. Steffen is entitled to compensation under the Act, in the sum of $3390.95.

Let judgment be entered accordingly.

Dated this 10 day of May, 1944.

PAUL J. McCORMICK
Judge of the United States
District Court

[Endorsed]: Filed May 10, 1944. [63]

In the District Court of the United States, Southern District of California, Central Division

No. 3423-M

(In Admiralty)

HILLCONE STEAMSHIP COMPANY, a corporation; SANTA CRUZ OIL COMPANY, a corporation; and ASSOCIATED INDEMNITY CORPORATION, a corporation,

Complainants,

vs.

WARREN H. PILLSBURY, Deputy Commissioner of the United States Employees' Compensation Commission for the Thirteenth District; and ALBERT V. STEFFEN,

Respondents.

DECREE

The above entitled action came on regularly to be heard on March 27, 1944, before the above entitled Court, the Hon. Paul J. McCormick, Judge Presiding without a jury on motions for summary judgment by the respondents, Warren H. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission for the Thirteenth District, and Albert V. Steffen, the respondent Albert V. Steffen appearing by his attorneys, Wm. P. Lord and A. A. Goldstone, A. A. Goldstone of counsel, the respondent Warren H. Pillsbury, Deputy Commissioner, appearing by Charles H. Carr, U. S. Attorney, and Clyde C. Downing, Assistant U. S. Attorney, Clyde C. [64] Downing of

counsel, and complainants, Hillcone Steamship Company, Santa Cruz Oil Company and Associated Indemnity Corporation, appearing by their attorney Syril S. Tipton; the parties hereto, through their respective counsel, having stipulated that an erroneous mathematical computation in the award was made by the Deputy Commissioner and that the correct amount of the award should be $3390.95 instead of the $4410.71 awarded, and the respective counsel having stated that the only issues, it having been conceded by complainants that all other issues were properly determined by the Deputy Commissioner, in this proceeding are:

(1) Whether the Deputy Commissioner erred as a matter of law in failing to find that the claim of the respondent Albert V. Steffen for compensation, under the Longshoremen's and Harbor Workers' Compensation Act, was barred by the provisions of Section 13a of the Act; and (2) Whether the Deputy Commissioner erred as a matter of law in applying the provisions of Section 30f of the Act to this claim, and the cause having been duly submitted on the record, as certified by said Deputy Commissioner, oral argument and briefs of counsel, and the Court having been fully advised in the premises, and having made its Findings of Fact and Conclusions of Law,

It is hereby ordered, adjudged and decreed as follows:

That the respondent Albert V. Steffen is entitled to relief under the Longshoremen's and Harbor

Workers' Compensation Act, and that the award of the Deputy Commissioner under the Act is affirmed in the sum of $3390.95.

It is further ordered that the order for the interlocutory injunction entered February 2, 1944, be, and the same is hereby vacated and set aside.

It is further ordered that the respondent Albert V. Steffen recover from the complainants his costs herein expended, the same to be taxed by the Clerk of the Court. [65]

Dated this 10th day of May, 1944.

PAUL J. McCORMICK
Judge of the United States
District Court

Judgment entered May 10, 1944. Docketed May 10, 1944. C.O. Book 25, page 331. Edmund L. Smith, Clerk. By L. Wayne Thomas, Deputy.

[Endorsed]: Filed May 10, 1944. [66]

[Title of District Court and Cause.]

NOTICE OF ENTRY OF DECREE

To the Complainants Hillcone Steamship Company, Santa Cruz Oil Company, and Associated Indemnity Corporation, and their attorney, Syril S. Tipton:

Please take notice that a decree, copy of which was served on you on May 1, 1944, was duly entered in Civil Order Book No. 25, page 331, in the office of

the Clerk of the United States District Court for the Southern District of California, Central Division, on the 10th day of May, 1944, the last paragraph thereof, with respect to attorneys' fees, having been stricken therefrom.

Dated Los Angeles, California, the 15th day of May, 1944.

WM. P. LORD and
A. A. GOLDSTONE
By A. A. GOLDSTONE
Attorneys for Respondent
Albert V. Steffen [67]

Received copy of the within Notice of Entry of Decree.

Dated: This 15th day of May, 1944.

SYRIL S. TIPTON
Attorney for Complainants

Received copy of the within Notice of Entry of Decree.

Dated: This 15th day of May, 1944.

CHARLES H. CARR
U. S. Atty.
By CLYDE C. DOWNING
Attorney for.....

[Endorsed]: Filed May 15, 1944. [68]

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL AND FOR INJUNCTION PENDING APPEAL

The libelants, Associated Indemnity Corporation, a corporation, and Hillcone Steamship Company, a corporation, and Santa Cruz Oil Company, a corporation, each believing itself aggrieved by the decree of the court made and entered on the 10th day of May, 1944, wherein and whereby its libel and bill of complaint for injunction was denied, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors, which is filed herewith, and your petitioners respectfully pray that this appeal may be allowed, that a citation be issued directed to the above named respondents, and each of them, as provided by law, and that a transcript of record and proceedings upon which said decree was based be duly authenticated and sent to the Circuit Court of Appeals for the Ninth Circuit.

ASSOCIATED INDEMNITY
CORPORATION,
HILLCONE STEAMSHIP
COMPANY and
SANTA CRUZ OIL COMPANY
By SYRIL S. TIPTON
Their Proctor [69]

Receipt of copy of the within Petition for Allowance of Appeal and for Injunction Pending Appeal is hereby admitted this 15 day of May, 1944.

RONALD WALKER
Attorney for Respondent
Warren H. Pillsbury

[Endorsed]: Filed May 15, 1944. [70]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Now come the libellants in the above entitled cause, by their proctor, and in connection with their petition for appeal, assign the following errors in the decree of this court entered:

I.

That the United States District Court for the Southern District of California, Central Division, erred in making and entering the order and decree, dated the day of denying the libellants' application for mandatory injunction to restrain the order of the respondent, Warren H. Pillsbury, as prayed in its libel, even though subject to the correction stipulated as to the amount due under said award, decision and decree of said Warren H. Pillsbury.

II.

That the said court erred in sustaining the respondent, Warren H. Pillsbury's exception to

libellants' libel and confirming the compensation order, subject to the stipulation as to the amount thereof, to the respondent Albert V. Steffen, made and filed the 2d day of February, 1944, and in denying the motion for an inter- [71] locutory injunction filed by libellants in said action.

III.

That said court erred in refusing to enter a decree and order herein declaring that the said compensation order of respondent, Warren H. Pillsbury, described in the complainants' complaint, was not in accordance with the law, and that the same be vacated and set aside.

IV.

That said court erred in supporting the finding of respondent Warren H. Pillsbury, Deputy Commissioner for the Thirteenth Compensation District, under the Longshoremen's and Harbor Workers' Compensation Act, that respondent Steffen filed his claim for compensation benefits before said Deputy Commissioner in the time specified and required by law, although he did not file his claim for benefits under the Longshoremen's and Harbor Workers' Compensation Act within one year of the date of his injury in accordance with Section 13(a) of said Act; that any claim for compensation benefits to which he might be entitled was barred by the running of time; that said Warren H. Pillsbury had no jurisdiction to entertain such claim and the en-

tertainment and awarding of compensation benefits was contrary to law, as was the order, decree and decision of the District Court herein; that there is no justification in law or fact for the finding that time did not begin to run against the claim until disability with loss of wage occurred; that your Honorable Court placed almost entire reliance for the decision complained of on the case of Marshall, et al. v. Pletz, 1942 A.M.C., Vol. 1, pages 631-632, a Circuit Court of Appeals decision which is of no authority and effect because it was overruled, annulled and reversed by the United States Supreme Court on January 4, 1943 (see William A. Marshall, Deputy Commissioner, et al. v. Pletz, 1943 A.M.C., Vol. 1, page 9); that the said claim was definitely barred by the running of time, which was affirmatively set up and argued and contended at the hearings and proceedings in this matter before said Deputy Commissioner and before your Honor- [72] able Court, and that therefore your Honorable Court exceeded its authority and committed an act without its jurisdiction in vacating the order for interlocutory injunction as aforesaid, because of its issuance and promulgation of findings of fact and conclusions of law and judgment issued and rendered on the 10th day of May, 1944.

V.

That the finding that the claim before Deputy Commissioner Pillsbury was filed within proper time, and that the affirmative allegation and defense

that it was not so properly filed and the act was without the jurisdiction of your Honorable Court and the Deputy Commissioner and was an act contrary to law and not based upon the facts of the case.

SYRIL S. TIPTON
Proctor for Libellants

Receipt of copy of the above Assignment of Errors is acknowledged this 15 day of May, 1944.

RONALD WALKER
Asst. U. S. Atty.
Attorney for Respondent
Warren H. Pillsbury

[Endorsed]: Filed May 15, 1944. [73]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

The petition of the libellants in the above entitled cause for the allowance of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit is hereby allowed, the appellants to file a bond in the sum of Two Hundred and Fifty Dollars to be approved by the undersigned Judge and conditioned as a bond for costs of the said Circuit Court of Appeals.

It is further ordered that a copy of this order, certified by the clerk to be such, may be served upon

the solicitors for said Warren H. Pillsbury in lieu of personal service upon him.

Done in Chambers this 15th day of May, 1944.

PAUL J. McCORMICK
Judge [74]

Receipt of copy of the within Order Allowing Appeal is hereby admitted this 15 day of May, 1944.

RONALD WALKER
Asst. U. S. Atty.
Attorney for Respondent
Warren H. Pillsbury

[Endorsed]: Filed May 15, 1944. [75]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents, that Pacific Indemnity Company, a corporation, duly organized and existing under the laws of the State of Calif., and duly authorized and qualified to do business within the State of California, for the purpose of making, guaranteeing or becoming surety upon bonds or undertakings required or authorized by the laws by the United States of America or of the State of California, is held and firmly bound unto Warren H. Pillsbury, as Deputy Commissioner of the United States Employees' Compensation Commission for the 13th Compensation District, and

unto his successors in such office and unto Albert V. Steffen, in the penal sum of Two Hundred Fifty and 00/100 ($250.00) Dollars for the payment of which, well and truly to be made unto the said respondents or their said successors and personal representatives respectively, and said Pacific Indemnity Company hereby binds itself, its successors and assigns firmly by these presents.

Signed and sealed at Los Angeles, California, this 12th day of May, A. D., 1944.

The condition of the foregoing obligation and undertaking is such, that whereas the above named libellants, Associated Indemnity Corporation, [76] and Hillcone Steamship Company and Santa Cruz Oil Company, in the above entitled suit have appealed and are about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order and decree made and entered in the above entitled Court and cause upon May 10, 1944, granting an order vacating an interlocutory injunction entered on February 2, 1944;

Now, therefore, if the said Hillcone Steamship Company, Santa Cruz Oil Company, and Associated Corporation shall prosecute their said appeal to effect and answer all costs which may be awarded or adjudged against them or either of them if they fail to make good their said appeal, then this obligation shall be void; otherwise to remain in full force and effect, and in case of any breach of said condition, it is expressly agreed that the said District Court may, upon notice to this obligor of not

less than ten days, proceed summarily in the above entitled suit to ascertain the amount which it is bound to pay on account of such breach, and render judgment against this obligor therefor and award execution thereon.

In Witness Whereof, these presents have been executed by the attorney in fact of said obligor thereunto duly authorized and the seal of said obligor affixed, upon the day and year hereinabove written.

The premium charged for this bond is $10.00 per annum.

PACIFIC INDEMNITY
COMPANY
By W. E. BENING
Its attorney in fact

[Seal]
Attest:

.....
Attesting Agent [77]

State of California,
County of Los Angeles—ss.

On this 12th day of May in the year one thousand nine hundred and 44 before me, Atala M. Carter, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared W. E. Bening, known to me to be the duly authorized Attorney-in-Fact of Pacific Indemnity Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Company, and the said W. E

Bening acknowledged to me that he subscribed the name of Pacific Indemnity Company thereto as surety and his own name as Attorney-in-Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

ATALA M. CARTER
Notary Public in and for Los Angeles County, State of California

My Commission expires May 28, 1946.

[Seal]

Examined and recommended for approval as provided in Rule 8.

SYRIL S. TIPTON
Proctor for Libellant

I hereby approve the foregoing bond.

Dated this 15th day of May, 1944.

PAUL J. McCORMICK
U. S. District Judge for the Southern District, Central Division

[Endorsed]: Filed May 15, 1944. [78]

[Title of District Court and Cause.]

NOTICE OF MOTION RE INTERLOCUTORY INJUNCTION

To the Respondent, Warren H. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission, and to United States Attorney, Attorney for said Respondent:

To Albert V. Steffen, Respondent, and to A. A. Goldstone and Wm. P. Lord, His Attorneys:

You, and each of you, will please take notice that the Complainants above named, through their attorney, will move the above entitled Court, in the Court Room of Judge Paul J. McCormick, located in the Federal Building, Los Angeles, California, on Monday, May 29, 1944, at the hour of 10:00 A. M., or as soon thereafter as the matter may be heard, for its Order for an interlocutory injunction staying the execution of the Judgment herein pending the appeal of this matter to the United States Circuit Court of Appeals for the Ninth District.

Said motion will be made upon the ground that Complainants herein will be irreparably damaged if an injunction is not allowed [79] during this appeal, and the granting of said injunction will obviate much trouble, vexation and multiplicity of suits.

Said motion will be based upon the Affiadvit of M. A. Lavore filed herewith and upon the records, files and proceedings herein.

Dated this 15th day of May, 1944.

SYRIL S. TIPTON

Proctor for Libellants [80]

State of California,
County of Los Angeles—ss.

No. 3423 M
In Admiralty

S. S. Tipton, being duly sworn, says, that affiant is a citizen of the United States, over 18 years of age, a resident of Los Angeles County and not a party to the within action. That affiant's business address is 823 Title Guarantee Bldg., Los Angeles, Calif. That affiant served a copy of the attached Notice of Motion Re Interlocutory Injunction by placing said copy in an envelope addressed to Charles H. Carr, United States Attorney, his office address, which is 600 Federal Bldg., Los Angeles 12, Calif., which envelope was then sealed and postage fully prepaid thereon, and thereafter was on May 16, 1944, deposited in the United States Mail at Los Angeles. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

S. S. TIPTON

Subscribed and sworn to before me May 16, 1944.
DELLA ALLAIRE
Notary Public in and for the County of Los Angeles, State of California

My Commission expires October 15, 1946.
[Seal] [81]

State of California,
County of Los Angeles—ss.

No. 3423 M
In Admiralty

S. S. Tipton, being duly sworn, says, that affiant is a citizen of the United States, over 18 years of age, a resident of Los Angeles County and not a party to the within action. That affiant's business address is 823 Title Guarantee Bldg., Los Angeles, Calif. That affiant served a copy of the attached Notice of Motion Re Interlocutory Injunction by placing said copy in an envelope addressed to A. A. Goldstone and Wm. P. Lord, Attorneys at Law, their office address, which is 608 South Hill St., Los Angeles 14, which envelope was then sealed and postage fully prepaid thereon, and thereafter was on May 16, 1944, deposited in the United States mail at Los Angeles. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

S. S. TIPTON

Subscribed and sworn to before me May 16, 1944.
DELLA ALLAIRE
Notary Public in and for the County of Los Angeles, State of California.

My Commission expires October 15, 1946.
[Seal]

[Endorsed]: Filed May 18, 1944. [82]

Title of District Court and Cause.]

AFFIDAVIT FOR INJUNCTION
PENDING APPEAL

State of California,
County of Los Angeles—ss.

M. A. Lavore, being first duly sworn, deposes and says:

That he is the Claims Superintendent of Associated Indemnity Corporation, a corporation, one of the libellants in the above entitled cause; that libellants will be irreparably damaged if an injunction is not allowed during this appeal in that if the award of Three Thousand Three Hundred Eighty-nine and 92/100 ($3389.92) Dollars made in favor of respondent Albert V. Steffens is paid and then the determination on appeal is made in favor of this libellant, much trouble and vexation and multiplicity of suits will be involved in order to obtain the return of said Three Thousand Three Hundred Eighty-nine and 92/100 [83] (3389.92) Dollars, and the advantage of this appeal will be lost to your libellants above named.

Further affiant saith not.

M. A. LAVORE

Subscribed and sworn to before me this 16th day of May, 1944.

DELLA ALLAIRE

Notary Public in and for said County and State.

My Commission expires October 15, 1946.

[Seal] [84]

State of California,
County of Los Angeles—ss.

No. 3423 M
In Admiralty

S. S. Tipton, being duly sworn, says, that affiant is a citizen of the United States, over 18 years of age, a resident of Los Angeles County and not a party to the within action. That affiant's business address is 823 Title Guarantee Bldg., Los Angeles, Calif. That affiant served a copy of the attached Affidavit for Injunction Pending Appeal by placing said copy in an envelope addressed to Charles H. Carr, United States Attorney, his office address, which is 600 Federal Bldg., Los Angeles 12, Calif., which envelope was then sealed and postage fully prepaid thereon, and thereafter was on May 16, 1944, deposited in the United States Mail at Los Angeles. That there is delivery service by United States mail at the place so addressed or regular communication by United States mail between the place of mailing and the place so addressed.

S. S. TIPTON

Subscribed and sworn to before me May 16, 1944.

DELLA ALLAIRE

Notary Public in and for the County of Los Angeles, State of California.

My Commission expires October 15, 1946.
[Seal] [85]

State of California,
County of Los Angeles—ss.

No. 3423 M
In Admiralty

S. S. Tipton, being duly sworn, says, that affiant is a citizen of the United States, over 18 years of ago, a resident of Los Angeles County and not a party to the within action. That affiant's business address is 823 Title Guarantee Bldg., Los Angeles, Calif. That affiant served a copy of the attached Affidavit for Injunction Pending Appeal by placing said copy in an envelope addressed to A. A. Goldstone and Wm. P. Lord, Attorneys at Law, their office address, which is 608 South Hill St., Los Angeles 14, which envelope was then sealed and postage fully prepaid thereon, and thereafter was on May 16, 1944, deposited in the United States Mail at Los Angeles. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

S. S. TIPTON

Subscribed and sworn to before me May 16, 1944.
DELLA ALLAIRE
Notary Public in and for the County of Los Angeles, State of California.

[Seal]

[Endorsed]: Filed May 18, 1944. [86]

[Title of District Court and Cause.]

ORDER FOR INTERLOCUTORY INJUNCTION PENDING APPEAL AND FIXING THE AMOUNT OF SUPERSEDEAS BOND

A motion for an interlocutory injunction for an order to stay the execution of judgment herein pending the appeal of this cause to the United States Circuit Court of Appeals for the Ninth District coming on for hearing in the Court Room of the Honorable Paul J. McCormick in the City of Los Angeles on June 5, 1944, before the Honorable Paul J. McCormick. The complainants being represented by their counsel, Syril S. Tipton, the respondent, Warren H. Pillsbury, by Clyde C. Downing, Assistant United States Attorney, by A. A. Goldstone and Albert V. Steffen by his counsel, A. A. Goldstone.

A motion for an interlocutory injunction and for an Order fixing the amount of the supersedeas bond having been duly made by the complainants and the Affidavit of M. A. Lavore having been duly [87] considered and the matters of record herein having been duly presented by all the parties, and it appearing that the respondent, Albert V. Steffen, is not in need of funds upon which to live, and it appearing that a lump sum payment of $3390.95 is payable under the decree herein, and it appearing from all of the matters presented that irreparable damage would result to the complainants if a stay were not granted, and good cause appearing therefor;

It is hereby ordered and decreed as follows:

That the amount of the supersedeas bond herein shall be fixed in the sum of $7000.00.

It is further ordered and decreed that upon the filing of a supersedeas bond in the amount of $7000.00 that during the pendency of the appeal in the above entitled action to the United States Circuit Court of Appeals for the Ninth District a stay of execution of the judgment provided for herein shall be and is hereby granted.

It is further ordered and decreed that a copy of this Order may be served upon the attorneys for the respective parties in lieu of service upon the parties hereto.

Dated this 12th day of June, 1944.

PAUL J. McCORMICK
Judge

[Endorsed]: Filed June 12, 1944. [88]

[Title of District Court and Cause.]

APPEAL BOND

Know All Men by These Presents, That we Hillcone Steamship Company, a corporation, Santa Cruz Oil Company, a corporation, and Associated Indemnity Corporation, a corporation, as Principals, and Pacific Indemnity Company, a corporation duly organized and doing business under and by virtue of the laws of the State of California, and duly qualified for the purpose of making, guaranteeing or becoming surety upon bonds or under-

takings required or authorized by the laws of the United States of America, as Surety, are held and firmly bound unto Warren H. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission, for the Thirteenth District, and Albert V. Steffen, in the sum of Seven Thousand & no/100 Dollars ($7,000.00), lawful money of the United States, to be paid to them, or their successors, to which payment well and truly to be made, we bind ourselves, and our heirs, executors, administrators and successors, jointly and severally by these presents.

Whereas, on the 15th day of May, 1944 an Order was made by the said Court, in the above entitled cause, allowing the petition of the Complainants to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from a judgment and decree entered on the 10th day of May, 1944; and

Whereas, it was further ordered by the Court that upon said petitioners, Hillcone Steamship Company, a corporation, Santa Cruz Oil Company, a corporation, Associated Indemnity Corporation, a corporation, filing a bond in the sum of Seven Thousand & no/100 Dollars ($7,000.00), with sufficient surety, and conditioned as required by law, the same shall operate as a supersedeas of the said judgment and decree.

Now the condition of the above obligation is such that if the said Complainants shall prosecute said appeal to effect and answer all damages and costs, if Complainants fail to make good their plea, then the

above obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, the Principals have hereunto set their hands and seals and the Surety has caused this instrument to be executed by its duly authorized Attorney-in-Fact and its corporate seal affixed, this 5th day of June, A. D. 1944.

HILLCONE STEAMSHIP
COMPANY
By J. J. COMY
Vice-President

Attest:
T. R. KERDELL
Secretary [89]

SANTA CRUZ OIL
CORPORATION
(Described above as Santa Cruz
Oil Company
By J. J. COMY
Vice-President

Attest:
T. R. KERDELL
Secretary

ASSOCIATED INDEMNITY
CORPORATION
By [Illegible]
Assistant Secretary

PACIFIC INDEMNITY
COMPANY
By W. E. BENING
Attorney-in-Fact

Examined and recommended for approval as provided in Rule 8.

SYRIL S. TIPTON
Attorney

I hereby approve the foregoing.
Dated this 12th day of June, 1944.

PAUL J. McCORMICK
Judge (or Clerk)

The rate of premium charged on this bond is $20.00 on the judgment per thousand; the total amount of premium charged is $70.00.

[Endorsed]: Filed June 12, 1944. [90]

[Title of District Court and Cause.]

STIPULATION RE RECORD ON APPEAL

It is hereby stipulated, by and between the parties to the above entitled cause*d*, through their respective attorneys, that for the purpose of making up the record on appeal herein the original certified transcript of the proceedings and testimony had before the respondent, Warren H. Pillsbury, Deputy Commissioner, including the exhibits, shall be transmitted to the Circuit Court of Appeals in lieu of the copies for use in printing the record on appeal.

Dated this 12th day of June, 1944.

SYRIL S. TIPTON
Attorney for Complainants
RONALD WALKER
Asst. United States Attorney
Attorney for Respondent,
Warren H. Pillsbury [91]
A. A. GOLDSTONE &
WM. P. LORD
By A. A. GOLDSTONE
Attorneys for Respondent,
Albert V. Steffen

[Endorsed]: Filed June 12, 1944. [92]

[Title of District Court and Cause.]

ORDER RE RECORD ON APPEAL

The parties hereto having stipulated that the original of certain portions of the record to be printed on appeal may be transmitted to the Circuit Court of Appeals in lieu of copies, and good cause appearing therefor,

It is hereby ordered as follows:

That the original certified transcript of the proceedings and testimony had before the respondent, Warren H. Pillsbury, Deputy Commissioner, including the exhibits, shall be transmitted to the Circuit Court of Appeals in lieu of the copies for use in printing the record on appeal.

Dated this 12th day of June, 1944.

PAUL J. McCORMICK
Judge

[Endorsed]: Filed June 12, 1944. [93]

[Title of District Court and Cause.]

APOSTLES ON APPEAL

To the Clerk of the above entitled Court:
Sir:

You will please make up, certify and file a transcript of the record in the above entitled cause upon the appeal thereof to the United States Circuit Court of Appeals for the Ninth *District,* and incorporate therein the following:

Answer;

Compensation Order and Award of Compensation;

Memorandum of Points and Authorities in Support of Bill of Complaint for Injunction;

Exceptions and Motion for Judgment of Respondents Warren H. Pillsbury and Albert V. Steffen, to Libel;

Testimony taken before Respondent, Warren H. Pillsbury, and any exhibits annexed thereto, particularly, to include those referred to in the libel and bill of complaint;

Opinion and Memorandum of the District Judge, Honorable Paul J. McCormick, dated April 25, 1944; [94]

Findings of Fact and Conclusions of Law;
Decree filed and entered the day of , 1944;
Notice of entry of judgment, dated the day of , 1944;

The following papers filed on or about May 15, 1944:

Petition for Allowance of Appeal, and for Injunction Pending Appeal;
Affidavit for Injunction Pending Appeal;
Injunction and Order Allowing Appeal;
Cost Bond on Appeal;
Citation and Admission of Service and Certificate of Service;
Assignment of Errors;
Clerk's Certificate to Transcript of Record;
Apostles on Appeal.

Dated: May 15, 1944.

SYRIL S. TIPTON
Proctor for Libellants

Receipt of copy of the within Apostles on Appeal is hereby admitted this 15 day of May, 1944.

CLYDE C. DOWNING
Asst. U. S. Atty.
Attorney for Respondent
Warren H. Pillsbury

[Endorsed]: Filed May 15, 1944. [95]

[Title of District Court and Cause.]

RECEIPT FOR SERVICE

I, A. A. Goldstone, Attorney for Respondent, Albert V. Steffen, hereby admit service upon me of copies of the following instruments:

1. Order Allowing Appeal dated May 15, 1944.
2. Petition for Allowance of Appeal.
3. Citation dated May 15, 1944.
4. Assignment of Errors.
5. Cost Bond on Appeal.
6. Apostles on Appeal dated May 15, 1944.

Dated this 19th day of May, 1944.

A. A. GOLDSTONE &
WM. P. LORD
By A. A. GLADSTONE
Attorneys for Respondent,
Albert V. Steffen

[Endorsed]: Filed May 24, 1944. [96]

[Title of District Court and Cause.]

COUNTERDESIGNATION OF RECORD ON APPEAL AND PRAECIPE

Respondent Albert V. Steffen designates the following additional parts of apostles on appeal in the above entitled matter:

1. Certified record of the proceedings and testimony had before the Respondent Warren H. Pillsbury, Deputy Commissioner on September 27, 1943.

2. Notice of motion for summary judgment together with points and authority attached thereto of the Respondent Albert V. Steffen.

3. Answer of Respondent Albert V. Steffen, answer of [97] Defendant Warren H. Pillsbury, Deputy Commissioner.

4. Motion for summary judgment of Respondent Warren H. Pillsbury, Deputy Commissioner.

5. Memorandum of the Respondent Warren H. Pillsbury in support of his motion for judgment.

It is hereby requested that the record on appeal be prepared in accordance with the foregoing demand and praecipe and certified to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: May 27, 1944.

WM. P. LORD and
A. A. GOLDSTONE
By A. A. GOLDSTONE
Proctors for Respondent
Albert V. Steffen

Received copy of the within counterdesignation this 29 day of May, 1944.

SYRIL S. TIPTON

Received copy of the within counterdesignation this 29th day of May, 1944.

CLYDE C. DOWNING
Asst. U. S. Attorney

[Endorsed]: Filed May 29, 1944. [98]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 98 inclusive contain the original Citation and Admission of Service and full, true and correct copies of: Complaint for Injunction; Answer of Respondent Albert V. Steffen; Notice of Motion for Summary Judgment with Points and Authorities; Answer of Defendant Warren H. Pillsbury, Deputy Commissioner; Notice of Motion for Summary Judgment; Memorandum in Support of Defendant's Motion for Judgment; Memorandum in Opposition to Respondents' Motion for Judgment; Memorandum of Decision; Findings of Fact and Conclusions of Law; Decree; Notice of Entry of Decree; Petition for Allowance of Appeal and for Injunction Pending Appeal; Assignment of Errors; Order Allowing Appeal; Cost Bond on Appeal; Notice of Motion re Interlocutory Injunction; Affidavit for Injunction Pending Appeal; Order for Interlocutory Injunction Pending Appeal and Fixing the Amount of Supersedeas Bond; Supersedeas Bond; Stipulation re Record on Appeal; Order re Record on Appeal; Praecipe for Apostles on Appeal; Receipt for Service; and Counterdesignation of Record on Appeal and Praecipe which, together with the Original Transcript of Proceedings before the United States Employees Compensation Commission, transmitted herewith, constitute the Apostles

on Appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to $34.40, which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 16 day of June, 1944.

EDMUND L. SMITH,
Clerk,
By THEODORE HOCKE,
Deputy Clerk.

[Seal]

[Endorsed]: No. 10807. United States Circuit Court of Appeals for the Ninth Circuit. Associated Indemnity Corporation, a corporation, Hillcone Steamship Company, a corporation and Santa Cruz Oil Company, a corporation, Appellants, vs. Warren H. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission, for the Thirteenth District and Albert V. Steffen, Appellees. Apostles on Appeal. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed June 19, 1944.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the District Court of the United States, Southern District of California, Central Division

HILLCONE STEAMSHIP COMPANY, a corporation, et al.,

Complainants,

vs.

WARREN H. PILLSBURY, Deputy Commissioner of the United States Employees' Compensation Commission, for the Thirteenth District, and Albert V. Steffen,

Respondents.

ASSIGNMENT OF ERRORS

Hillcone Steamship Company, a corporation, Santa Cruz Oil Company, a corporation, and Associated Indemnity Corporation, a corporation, and each of the Appellants herein, assign errors in the record and proceedings in this cause by adopting as their points on appeal the Assignment of Errors appearing in the transcript of record.

W. N. MULLEN
SYRIL S. TIPTON
Proctors for Complainants

Receipt of copy of above Assignment of Errors is acknowledged this 29th day of June, 1944.

FRANK J. HENNESSY
Attorney for Respondents
Per T. S.

[Endorsed]: Filed Jun. 29, 1944. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10807

HILLCONE STEAMSHIP COMPANY,
a corporation, et al.,

Complainants,

vs.

WARREN H. PILLSBURY, Deputy Commissioner of the United States Employees' Compensation Commission, for the Thirteenth District, and Albert V. Steffen,

Respondents.

DESIGNATION OF RECORD ON APPEAL

To the Honorable Paul P. O'Brien, Clerk of the above entitled Court:

You will please cause to be made up, printed and filed in the above entitled court and cause the record on appeal to consist of the following, to wit: That part of the transcript upon appeal as certified to by the Clerk of the District Court, as follows:

The entire record as now certified to your Honorable Court, except that part of the record covered and printed in Apostles on Appeal in that action entitled, "Hillcone Steamship Company, a corporation, Santa Cruz Oil Company, a corporation, and Associated Indemnity Corporation, a corporation, Appellants, v. Albert V. Steffen", numbered 10361.

The libelants deposit herewith, the sum of Three Hundred Forty and 00/100 ($340.00) Dollars as estimated cost of printing of said record and will pay such other and further costs or expenses as may be incurred in that behalf.

Dated: June 29, 1944.

W. N. MULLEN
SYRIL S. TIPTON
Proctors for Libelants

Receipt of copy is hereby acknowledged this 29th day of June, 1944.

FRANK J. HENNESSY
Proctor for Respondent
Per T. S.

[Endorsed]: Filed June 29, 1944. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION RE RECORD ON APPEAL

It is hereby stipulated, by and between the parties in the above entitled action, through their respective attorneys, that that portion of the record on appeal printed in and covered by the Apostles on Appeal in the previous appeal in this cause, being in the above entitled Court and bearing No. 10361, may be incorporated into and referred to in the present appeal herein, and that that portion of said record on appeal covered by said Apostles on Ap-

peal, as above set out, need not be printed in the Apostles on Appeal herein.

Dated this 28th day of June, 1944.

S. S. TIPTON
W. N. MULLEN
Attorneys for Appellants
CHARLES H. CARR
United States Attorney
By CLYDE C. DOWNING
Asst. United States Attorney
Attorney for Appellee,
Warren H. Pillsbury

A. A. GOLDSTONE &
WM. P. LORD
By A. A. GOLDSTONE
Attorneys for Appellee,
Albert V. Steffen

Receipt of copy of above Stipulation Re Record on Appeal, is hereby acknowledged this 30th day of June, 1944.

FRANK J. HENNESSY
Proctor for Appellees
Per T.S.

So ordered:

FRANCIS A. GARRECHT,
United States Circuit Judge

[Endorsed]: Filed June 30, 1944. Paul P. O'Brien, Clerk.